NOTICE: *While reasonable efforts have been made to assure the accuracy of the data herein, this is* ***NOT*** *the official version of Senate Journal. It is published to provide information in a timely manner, but has* ***NOT*** *been proofread against the events of the session for this day. All information obtained from this source should be checked against a proofed copy of the Senate Journal.*

UNCORRECTED PROOF OF THE JOURNAL OF THE SENATE.

Wednesday, July 29, 1998.

Met at twenty-three minutes past one o'clock P.M.

Petitions.

Petitions were presented and referred, as follows:
By Mr. Nuciforo, a petition (subject to Joint Rule 12) of Andrea F. Nuciforo, Jr., and Shaun P. Kelly (by vote of the town of Cummington) for legislation relative to the transfer of a certain parcel of land by the Hampshire County Housing Authority [Local approval received];
By Mr. Pacheco, a petition (subject to Joint Rule 12) of Marc R. Pacheco and William M. Straus (by vote of the town) for legislation to ratify certain actions of the annual town meeting in the town of Rochester in 1964 [Local approval received]; and
By Mr. Rauschenbach, a petition (subject to Joint Rule 12) of Henri S. Rauschenbach for legislation relative to the Wampanoag Tribe of Gay Head;
Severally, under Senate Rule 20, to the committees on Rules of the two branches, acting concurrently.

Reports of Committees.

By Mr. Nuciforo, for the committee on Election Laws, on petition, a Bill relative to the election of the city clerk in the city of Springfield (Senate, No. 2140) [Local approval received];
Read and, under Senate Rule 26, placed in the Orders of the Day for the next session.

Mr. Berry, for the committee on Steering and Policy, reported that the following matters be placed in the Orders of the Day for the next session:
The House bills
Designating an overpass in the town of Somerset as the John Marshall overpass (House, No. 5430); and
Relative to cost of living adjustments (House, No. 5683).

Papers from the House

Bills
Authorizing the town of Clinton to reimburse certain real property taxes (House, No. 5099,— on petition) [Local approval received];
Authorizing certain by-laws relative to the town of Wellesley (House, No. 5398,— on petition) [Local approval received]; and
Authorizing the town of Natick to lease a certain building (House, No. 5624,— on petition) [Local approval received];
Were severally read and, under Senate Rule 26, placed in the Orders of the Day for the next session.

Orders of the Day.

The Orders of the Day were considered, as follows:
The House Bill authorizing the town of Plymouth to establish a special reserve fund (House, No. 5515) — **was read a second time and ordered to a third reading. Subsequently, Mr. Norton in the Chair, there being no objection, the bill was read a third time and passed to be engrossed, in concurrence.**

The President in the Chair,— the House bills
Authorizing the town of Hull to lease certain property (House, No. 5572);
Exempting the position of sealer of weights and measures in the town of Hingham from the provisions of the civil service law (House, No. 5574); and
Relative to personnel records (House, No. 5724);
Were severally read a second time and ordered to a third reading.

The House Bill relative to principal contracts (House, No. 1285, amended),— was read a second time.
Pending the question on ordering the bill to a third reading, Mr. Antonioni moved that the bill be amended by striking out the second and third sentences and inserting in place thereof: "Such contracts, after the expiration of the initial contract term shall be for a minimum of three years, but shall not exceed five years, unless both parties agree to a shorter term of employment. In cases where the parties have agreed to a shorter term of employment, the subsequent contracts must be for a minimum of three years."
The amendment was adopted. The bill, as amended, was ordered to a third reading. Subsequently, Mr. Norton in the Chair, there being no objection, the bill was read a third time and passed to be engrossed, in concurrence, its title having been changed by the committee on Bills in the Third Reading to read as follows: "An Act relative to school principal employment contracts."
Sent to the House for concurrence in the amendment adopted by the Senate.

Papers from the House.
Engrossed Bills — Land Taking for Conservation, Etc.

The President in the Chair,— there being no objection, during the Orders of the Day, an engrossed Bill authorizing the city of Brockton to convey certain land known as the Montello Pool (see Senate, No. 2274) (which originated in the Senate), having been certified by the Senate Clerk to be rightly and truly prepared for final passage, was put upon its final passage; and, this being a bill providing for the taking of land or other easements used for conservation purposes, etc., as defined by Article XCVII of the Amendments to the Constitution, the question on passing it to be enacted was determined by a call of the yeas and nays, at twenty-seven minutes past one o'clock P.M., as follows, to wit (yeas 38 — nays 0):

YEAS.

Amorello, Matthew J.	Melconian, Linda J.
Antonioni, Robert A.	Montigny, Mark C.
Bernstein, Robert A.	Moore, Richard T.
Berry, Frederick E.	Morrissey, Michael W.
Brewer, Stephen M.	Murray, Therese
Clancy, Edward J., Jr.	Norton, Thomas C.
Creedon, Robert S., Jr.	Nuciforo, Andrea F., Jr.
Durand, Robert A.	O'Brien, John D.
Fargo, Susan C.	Pacheco, Marc R.
Havern, Robert A.	Panagiotakos, Steven C.
Hedlund, Robert L.	Pines, Lois G.
Jacques, Cheryl A.	Rosenberg, Stanley C.
Jajuga, James P.	Shannon, Charles E.
Joyce, Brian A.	Tarr, Bruce E.
Keating, William R.	Tisei, Richard R.
Knapik, Michael R.	Tolman, Warren E.
Lees, Brian P.	Travaglini, Robert E.
Lynch, Stephen F.	Walsh, Marian

Magnani, David P. Wilkerson, Dianne

— 38.

NAYS. — 0

ABSENT OR NOT VOTING.

Rauschenbach, Henri S.

— 1.

The yeas and nays having been completed at twenty-nine minutes before two o'clock P.M., the bill was passed to be enacted, two-thirds of the members present having agreed to pass the same, and it was signed by the President and laid before the Acting Governor for his approbation.

There being no objection, during the Orders of the Day, an engrossed Bill authorizing the town of Princeton to grant certain easements to Worcester County (see House, No. 5447) (which originated in the House), having been certified by the Senate Clerk to be rightly and truly prepared for final passage,— was put upon its final passage; and, this being a bill providing for the taking of land or other easements used for conservation purposes, etc., as defined by Article XCVII of the Amendments to the Constitution, the question on passing it to be enacted was determined by a call of the yeas and nays, at twenty-eight minutes before two o' clock P.M., as follows, to wit (yeas 38 — nays 0):

YEAS.

Amorello, Matthew J.
Antonioni, Robert A.
Bernstein, Robert A.
Berry, Frederick E.
Fargo, Susan C.
Havern, Robert A.
Hedlund, Robert L.
Jacques, Cheryl A.
Jajuga, James P.
Joyce, Brian A.
Keating, William R.
Knapik, Michael R.
Lees, Brian P.
Lynch, Stephen F.
Magnani, David P.
Melconian, Linda J.
Montigny, Mark C.
Moore, Richard T.
Morrissey, Michael W.
Brewer, Stephen M.
Clancy, Edward J., Jr.
Creedon, Robert S., Jr.
Durand, Robert A.
Murray, Therese
Norton, Thomas C.
Nuciforo, Andrea F., Jr.
O'Brien, John D.
Pacheco, Marc R.
Panagiotakos, Steven C.
Pines, Lois G.
Rosenberg, Stanley C.
Shannon, Charles E.
Tarr, Bruce E.
Tisei, Richard R.
Tolman, Warren E.
Travaglini, Robert E.
Walsh, Marian
Wilkerson, Dianne

— 38.

NAYS. — 0

ABSENT OR NOT VOTING.

Rauschenbach, Henri S.

— 1.

The yeas and nays having been completed at twenty-four minutes before two o'clock P.M., the bill was passed to be enacted, two-thirds of the members present having agreed to pass the same, and it was signed by the President and laid before the Acting Governor for his approbation.

A Bill relative to the payment of wages (House, No. 5746,— on Senate, Nos. 25 and 83 and House, No. 1650),— was read. There being no objection, the rules were suspended, on motion of Mr. Lynch, and the bill was read a second time, ordered to a third reading, and read a third time.
After debate, the question on passing the bill to be engrossed was determined by a call of the yeas and nays, at seven minutes before two o'clock P.M., on motion of Mr. Lynch, as follows, to wit (yeas 39 — nays 0):—

YEAS.

Amorello, Matthew J.
Antonioni, Robert A.
Bernstein, Robert A.
Berry, Frederick E.
Brewer, Stephen M.
Clancy, Edward J., Jr.
Creedon, Robert S., Jr.
Durand, Robert A.
Fargo, Susan C.
Havern, Robert A.
Hedlund, Robert L.
Jacques, Cheryl A.
Jajuga, James P.
Joyce, Brian A.
Keating, William R.
Rauschenbach, Henri S.
Rosenberg, Stanley C.
Shannon, Charles E.
Tarr, Bruce E.
Tisei, Richard R.
Knapik, Michael R.
Lees, Brian P.
Lynch, Stephen F.
Magnani, David P.
Melconian, Linda J.
Montigny, Mark C.
Moore, Richard T.
Morrissey, Michael W.
Murray, Therese
Norton, Thomas C.
Nuciforo, Andrea F., Jr.
O'Brien, John D.
Pacheco, Marc R.
Panagiotakos, Steven C.
Pines, Lois G.
Tolman, Warren E.
Travaglini, Robert E.
Walsh, Marian
Wilkerson, Dianne

— 39.

NAYS. — 0.

Mr. Durand in the Chair,— the yeas and nays having been completed at four minutes before two o'clock P.M., the bill was passed to be engrossed, in concurrence.

Distinguished Guests.

The President in the Chair,— there being no objection, during the consideration of the orders of the Day, the President introduced, seated in the rear of the Chamber, Jan Cellucci, wife of Acting Governor Argeo Paul Cellucci. Mrs. Cellucci was accompanied by a delegation from Boston College. They were the guests of Senator Durand.

Matters Taken out of the Notice Section of the Calendar.

Mr. Durand in the Chair,— there being no objection, the following matters were taken out of the notice section of the calendar and considered, as follows:
The House Bill authorizing the establishment of the Burncoat Pond watershed district in the towns of Leicester and Spencer (House, No. 5558, amended),— **was read a second time, ordered to a third reading, read a third time and passed to be engrossed, in concurrence.**

The House Bill relative to the Union School of the towns of New Salem and Wendell (House, No. 4537),— was read a third time. Mr. Clancy, for the committee on Bills in the Third Reading, reported, asking to be discharged from further consideration thereof. The report was accepted.
Pending the question on passing the bill to be engrossed, Mr. Brewer moved that the bill be amended by striking out all after the enacting clause and inserting in place thereof the following text:
"Section 3 of chapter 385 of the acts of 1994 is hereby amended by adding the following paragraph:—
If the joint school committees fail to determine the amounts necessary to be raised to maintain and operate the Union school, the following provisions shall apply. The joint school committee shall convene a special district-wide meeting open to all registered voters in both municipalities at which the Union school district budget, proposed by the joint school committee, shall be considered. Such meeting shall be called pursuant to a warrant. under the hands of at least a majority of the joint school committee, notice of which shall be given at least fourteen days prior to the date of such meeting. The warrant shall state the time, place and purpose of the meeting and shall be directed to the joint school committee secretary, who shall give notice by posting a copy in the clerk's office of each town and at least two other public places in each member municipality and who shall further provide notice by publishing a copy of said warrant in at least one newspaper in general circulation within the member municipalities. The boards of selectmen of the member municipalities, in a joint meeting shall, by a majority vote of those present, appoint a town moderator or any other person acceptable to the boards of selectmen to act as moderator and the Union school district secretary shall keep the record of such meeting. Approval of the Union school district budget shall require the affirmative vote of at least a majority of those present and voting thereon, by a counted vote. The Union school district budget so approved shall be apportioned between the member municipalities and paid by them in accordance with the terms of the Union school district agreement.
If, after submission of the budget, no agreement is reached as to a budget for the Union school district, the district shall notify the department of education of a lack of a budget and the commissioner, or his designee, shall certify an amount sufficient for the operation of the district and order the appropriation thereof in an amount not less than one-twelfth of the total budget approved by the Union school's region in the most recent fiscal year. Similar sums shall be certified and appropriated for each successive month to insure the continued provision of services by the Union school district until such time as a budget is adopted and approved by the Union school committee and member towns in the manner otherwise provided herein. In the event a budget is not adopted by December 1 in any year, the department shall assume operation of the district and funds for this purpose shall be deducted from local aid distributed to member towns."
The amendment was adopted. The bill, as amended, was then passed to be engrossed, in concurrence.
Sent to the House for concurrence in the amendment.

The Senate Bill relative to the operation of the Ipswich system of sewers (Senate, No. 2212),— **was read a third time and passed to be engrossed.**
Sent to the House for concurrence.

Report of a Committee.

There being no objection, during the consideration of the orders of the Day, the following matter was considered as follows:
Mr. Berry, for the committee on Steering and Policy, reported that the following matter be placed in the orders of the Day for the next session:
The House Bill validating the acts and proceedings of the annual and special town meetings held in the town of Stoughton (printed in House, No. 5640).
There being no objection, the rules were suspended, on motion of Mr. Berry, and the bill was read a second time, ordered to a third reading, read a third time and passed to be engrossed, in concurrence.

At one minute before two o'clock P.M., the Senate proceeded to the Chamber of the House of Representatives, under the escort of the Sergeant-at-Arms, for the purpose of considering a proposal for a legislative amendment to the Constitution, which had been called for consideration in conformity with a provision of the Constitution.

Wednesday, July 29, 1998.

Joint Session of the Two Houses to Consider a Specific Legislative Amendment to the Constitution.

At five minutes past two o'clock P.M., pursuant to assignment, the two Houses met in

JOINT SESSION

and were called to order by the Honorable Thomas F. Birmingham, President of the Senate
The Proposal for a Legislative Amendment to the Constitution relative to the right to vote for incarcerated persons (see House, No. 1105, amended),— was read a third time. [Note: This title was inserted in the journal for information purposes. The original document is untitled.]
The committee on Bills in the Third Reading of the two houses, acting concurrently, having reported it to be correctly drawn.
The Proposal, as amended, reads as follows:
Proposal for a Legislative Amendment to the Constitution relative to the right to vote for incarcerated persons.
A majority of all the members elected to the Senate and House of Representatives, in joint session, hereby declares it to be expedient to alter the Constitution by the adoption of the following Article of Amendment, to the end that it may become a part of the Constitution [if similarly agreed to in a joint session of the next General Court and approved by the people at the state election next following]:

ARTICLE OF AMENDMENT.

Article III of the amendments to the Constitution, as amended, is hereby further amended by inserting after the word "upwards" the following words:— , excepting persons who are incarcerated in a correctional facility due to a felony conviction, and".

Mr. Swan of Springfield, Ms. Jehlen of Somerville and Mr. Rushing moved that the proposal be committed to a special committee of the Joint Session, consisting of three members appointed by the Senate president, and eight members appointed by the Speaker of the House.

Said committee shall make a detailed investigation and study of the words "domicile" and "residence" as determined by the Supreme Court of the Commonwealth and whether said proposed amendment is a violation of the Constitution of the United States (see Section 1 of Article 15 and Article 19 of the Amendments) concerning "the right of citizens to vote shall not be denied or abridged by the United States or by any state. . ." Said committee shall make a report of its findings and its recommendations to a joint session called for the purpose of receiving such report during next session of the General Court.
After debate, Mr. Norton in the Chair, the motion to commit to the special committee was *negatived*. Subsequently, Mr. Businger of Boston doubted the vote and requested a call of the yeas and nays. An insufficient number of members joining him in this request, the yeas and nays were not ordered.
The question on agreeing to the amendment was determined by a call of the yeas and nays, as required by Article XLVIII of the Amendments to the Constitution, at eleven minutes before three o'clock P.M., as follows, to wit (yeas 155 — nays 34):

Yeas (155).
Senators.

Amorello, Matthew J.	Melconian, Linda J.
Bernstein, Robert A.	Montigny, Mark C.
Berry, Frederick E.	Moore, Richard T.
Brewer, Stephen M.	Morrissey, Michael W.
Clancy, Edward J., Jr.	Murray, Therese
Durand, Robert A.	Norton, Thomas C.
Havern, Robert A.	Pacheco, Marc R.
Hedlund, Robert L.	Panagiotakos, Steven C.
Jacques, Cheryl A.	Pines, Lois G.
Jajuga, James P.	Rauschenbach, Henri S.
Joyce, Brian A.	Tarr, Bruce E.
Keating, William R.	Tisei, Richard R.
Knapik, Michael R.	Tolman, Warren E.

Lees, Brian P.
Lynch, Stephen F.
Travaglini, Robert E.

Representatives.

Bellotti, Michael G.
Binienda, John J.
Broadhurst, Arthur J.
Cabral, Antonio F. D.
Cahill, Michael P.
Cahir, Thomas S.
Canavan, Christine E.
Caron, Paul E.
Casey, Paul C.
Chandler, Harriette L.
Chesky, Evelyn G.
Ciampa, Vincent P.
Clark, Forrester A., Jr.
Cleven, Carol C.
Connolly, Edward G.
Correia, Robert
Creedon, Geraldine
Cresta, Brian M.
Cuomo, Donna F.
DeFilippi, Walter A.
DeLeo, Robert A.
Demakis, Paul C.
Dempsey, Brian S.
DiMasi, Salvatore F.
Donnelly, David T.
Donovan, Carol A.
Fallon, Christopher G.
Fennell, Robert F.
Finegold, Barry R.
Finnegan, Kevin L.
Finneran, Thomas M.
Flavin, Nancy
Frost, Paul K.
Gallitano, Joseph R.
Galvin, William C.
Gardner, Barbara
Garry, Colleen M.
Gately, David F.
Gauch, Ronald W.
George, Thomas N.
Koczera, Robert M.
Koutoujian, Peter J.
Kujawski, Paul
Kulik, Stephen
Landers, Patrick F., III
Lane, Harold M., Jr.
LeDuc, Stephen P.
LeLacheur, Edward A.
Lepper, John A.
Lewis, Maryanne
Locke, John A.
Mariano, Ronald
Marini, Francis L.
McGee, Thomas M.
McIntyre, Joseph B.
Merrigan, John F.
Miceli, James R.
Murphy, Charles A.
Murphy, Dennis M.
Murphy, Kevin J.
Murray, Mary Jeanette
Nagle, William P., Jr.
Naughton, Harold P., Jr.
O'Brien, Thomas J.
Parente, Marie J.
Pedone, Vincent A.
Peters, David M.
Petersen, Douglas W.
Peterson, George N., Jr.
Petrolati, Thomas M.
Poirier, Kevin
Pope, Susan W.
Provost, Ruth W.
Quinn, John F.
Resor, Pamela P.
Rodrigues, Michael J.
Rogeness, Mary S.
Rogers, John H.
Ruane, J. Michael
Scaccia, Angelo M.

Giglio, Anthony P.
Glodis, Guy
Goguen, Emile J.
Golden, Thomas A., Jr.
Gomes, Shirley
Greene, William G., Jr.
Hahn, Cele
Haley, Paul R.
Hall, Geoffrey D.
Hargraves, Robert S.
Harkins, Lida E.
Hart, John A., Jr.
Honan, Kevin G.
Hynes, Frank M.
Iannuccillo, M. Paul
Jones, Bradley H., Jr.
Kafka, Louis L.
Kaprielian, Rachel
Keenan, Daniel F.
Kelly, Shaun P.
Kennedy, Thomas P.
Klimm, John C.
Knuuttila, Brian
Serra, Emanuel G.
Simmons, Mary Jane
Slattery, John P.
Speliotis, Theodore C.
Sprague, Jo Ann
Stanley, Harriett L.
Stefanini, John A.
Stoddart, Douglas W.
Straus, William M.
Sullivan, David B.
Sullivan, Joseph C.
Teahan, Kathleen M.
Tobin, A. Stephen
Tolman, Steven A.
Toomey, Timothy J., Jr.
Travis, Philip
Turkington, Eric
Tuttle, David H.
Vallee, James E.
Verga, Anthony J.
Wagner, Joseph F.
Walrath, Patricia A.
Walsh, Martin J.

— 126.

Nays (34).
Senators.

Antonioni, Robert A.
Creedon, Robert S., Jr.
Fargo, Susan C.
Magnani, David P.
Nuciforo, Andrea F., Jr.
Shannon, Charles E.
Walsh, Marian
Wilkerson, Dianne

— 8.

Representatives.

Bosley, Daniel E.
Businger, John A.
Candaras, Gale D.
Fagan, James H.
Fitzgerald, Kevin W.
Fox, Gloria L.
Hodgkins, Christopher J.
Jehlen, Patricia D.
Kaufman, Jay R.
Khan, Kay
Larkin, Peter J.
McManus, William J., II
Menard, Joan M.
O'Brien, Janet W.
O'Flaherty, Eugene L.
Owens-Hicks, Shirley
Paulsen, Anne M.
Richie, Charlotte Golar
Rushing, Byron
Stasik, John H.
Story, Ennen
Swan, Benjamin

Malia, Elizabeth A.	Thompson, Alvin E.
Marzilli, J. James, Jr.	Wolfe, Alice K.

— 26.

ABSENT or Not Voting (6).
Senators.

O'Brien, John D.	Rosenberg, Stanley C.

— 2.

Representatives.

Angelo, Steven	Lewis, Jacqueline
Hyland, Barbara C.	Scibelli, Anthony M.

— 4.

The yeas and nays having been completed at two minutes past three o'clock P.M., the amendment was agreed to, a majority of all members elected having voted in the affirmative.
Mr. Rushing of Boston moved that this vote be reconsidered; and, after debate, the motion to reconsider was *negatived.*
In accordance with the requirements of the Constitution, the amendment was referred to the next General Court.

On motion of Mr. Bernstein, at eighteen minutes past three o'clock P.M., the joint session was adjourned; and the Senate returned to its Chamber, under the escort of the Sergeant-at-Arms.

At twenty-three minutes past three o'clock P.M., the Senate reassembled, Mr. Norton in the Chair.

Papers from the House

There being no objection, during the consideration of the orders of the Day, the following matters were considered, as follows:

Engrossed Bills.

The following engrossed bills (the first three of which originated in the Senate), having been certified by the Senate Clerk to be rightly and truly prepared for final passage, were severally passed to be enacted and were signed by the President and laid before the Acting Governor for his approbation, to wit:
Further regulating the Massachusetts Housing Finance Agency (see Senate, No. 522, changed);
Relative to the Massachusetts Industrial Finance Agency (see Senate, No. 1955);
Further regulating medical malpractice insurance (see House,
No. 1143, amended);
Relative to a certain retired employee of the town of Reading (see House, No. 5389);
Authorizing the South Middlesex Regional Vocational Technical School to pay certain health insurance premiums (see House, No. 5444);
Directing the Greenfield Retirement Board to pay a certain retirement benefit to the surviving spouse of firefighter Kenneth J. Creigle (see House, No. 5492);
Exempting the position of chief of police in the town of Acton from the provisions of the civil service law (see House, No. 5545); and
Relative to William G. Suprey (see House, No. 5566).

An engrossed Bill relative to the condominium and timeshare laws (see House, No. 5054, amended) (which originated in the House), **having been certified by the Senate Clerk to be rightly and truly prepared for final passage, was pass to be re-enacted and was signed by the President and again laid before the Acting Governor for his approbation.**

Engrossed Bill.

An engrossed Bill prohibiting the disclosure of the names and telephone numbers of Department of Social Service personnel (see Senate, No. 579) (which originated in the Senate), having been certified by the Senate Clerk to be rightly and truly prepared for final passage, was put upon its final passage.
The question on passing the bill to be enacted was determined by a call of the yeas and nays, at twenty-eight minutes past three o'clock P.M., on motion of Mr. Lees, as follows, to wit (yeas 38 — nays 0):

YEAS.

Amorello, Matthew J.	Joyce, Brian A.
Antonioni, Robert A.	Keating, William R.
Bernstein, Robert A.	Knapik, Michael R.
Berry, Frederick E.	Lees, Brian P.
Brewer, Stephen M.	Lynch, Stephen F.
Clancy, Edward J., Jr.	Magnani, David P.
Creedon, Robert S., Jr.	Melconian, Linda J.
Durand, Robert A.	Montigny, Mark C.
Fargo, Susan C.	Moore, Richard T.
Havern, Robert A.	Morrissey, Michael W.
Hedlund, Robert L.	Murray, Therese
Jacques, Cheryl A.	Norton, Thomas C.
Jajuga, James P.	Nuciforo, Andrea F., Jr.
Pacheco, Marc R.	Tarr, Bruce E.
Panagiotakos, Steven C.	Tisei, Richard R.
Pines, Lois G.	Tolman, Warren E.
Rauschenbach, Henri S.	Travaglini, Robert E.
Rosenberg, Stanley C.	Walsh, Marian
Shannon, Charles E.	Wilkerson, Dianne

— 38.

NAYS. — 0

ABSENT OR NOT VOTING.

O'Brien, John D.

— 1.

The yeas and nays having been completed at twenty-seven minutes before four o'clock P.M., the bill was passed to be enacted and it was signed by the President and laid before the Acting Governor for his approbation.

Communication.

The Clerk read the following communication:

COMMONWEALTH OF MASSACHUSETTS
MASSACHUSETTS SENATE
STATE HOUSE, BOSTON 02133

July 29, 1998.

Mr. Edward B. O'Neill

Clerk of the Senate
State House, Room 335
Boston, Massachusetts 02133

Dear Mr. O'Neill:
Due to a scheduling conflict I was unable to be present in the chamber on July 28, 1998. If I had been present I would have voted as follows on the several matters taken up by the Senate:
I would have voted in the affirmative on:

H.5147 -Relative to False Impersonations;
H.5114 - Relative to Certain Health Care Benefits;
H.5473 - Authorizing the town of North Reading to Convey Certain Conservation Land;
S.678 - Providing Health Care for Breast Reconstruction after Mastectomy Surgery for the Treatment of Breast Cancer.
Thank you for the opportunity to record how I would have voted on these issues and I ask that this letter be printed in the Senate Journal.

Sincerely,

ROBERT E. TRAVAGLINI,
State Senator.

On motion of Mr. Travaglini, the above statement was ordered printed in the Journal of the Senate.

Resolutions.

Resolutions (filed by Ms. Wilkerson "Honoring the Powerlights Gospel Singers of Boston", were referred, under the rule, to the committee on Rules.
Subsequently, Mr. Norton, for the said committee, reported, recommending that the resolutions ought to be adopted; and they were considered forthwith, under a suspension of the rules, moved by Ms. Wilkerson, and adopted.

Recess.

At twenty-four minutes before four o'clock P.M., the Chair (Mr. Norton) declared a recess subject to the call of the Chair; and, at fifteen minutes before four o'clock P.M., the Senate reassembled, the President in the Chair. The President thereupon declared a further recess subject to the call of the Chair; and, at twenty-six minutes past four o'clock P.M., the Senate reassembled, the President in the Chair.

Orders of the Day.

The Orders of the Day were further considered.
The House Bill protecting consumers in managed care health plans and for promotion of parity in the treatment of mental disorders (House, No. 5740, printed as amended),— was read a third time.
Ms. Melconian in the Chair,— pending the question on passing the bill to be engrossed, Mr. Clancy moved to amend the bill by adding the following section:—
"SECTION . The commissioner of insurance shall establish by regulation a date certain after which all policies or contracts issued or renewed by a carrier shall comply with the applicable provisions of this act. Said date certain shall be no earlier than February 1, 1999. For purposes of this section, carrier shall mean an insurer licensed pursuant to chapter 175, a hospital service corporation licensed pursuant to chapter 176A, a medical service corporation licensed pursuant to chapter 176B, and a health maintenance organization licensed pursuant to chapter 176G."
The amendment was *rejected*.
Mr. Clancy moved to amend the bill, in section 13, by adding the following paragraph:—
"Notwithstanding the foregoing, a hospital service corporation may enter into contracts with hospitals, physician groups, or both which shall govern payment for screening, stabilization and post-stabilization services provided to a member of the health maintenance organization by the contracting hospital or physician group; provided, however, that in the event that there is a dispute regarding the appropriateness of screening, stabilization or post-stabilization services, the member shall not be held liable by either the hospital service corporation, the hospital or physician group for any cost in excess of the applicable copayment, coinsurance or deductible if the member had acted as a prudent layperson in determining that an emergency condition existed."
The amendment was *rejected*.
Mr. Clancy moved, to amend the bill in Section 21 by adding the following subsection:—
"(d) Notwithstanding the other provisions of this section, a health maintenance organization may enter into contracts with hospitals, physician groups, or both which shall govern payment for screening, stabilization and post-stabilization services

provided to a member of the health maintenance organization by the contracting hospital or physician group; provided, however, that in the event that there is a dispute regarding the appropriateness of screening, stabilization or post-stabilization services, the member shall not be held liable by either the health maintenance organization, the hospital or physician group for any cost in excess of the applicable copayment, coinsurance of deductible if the member had acted as a prudent layperson in determining that an emergency condition existed.

The amendment was *rejected*.

Mr. Clancy moved to amend the bill, in section 14, by adding the following paragraph:—

"Notwithstanding the other provisions of this section, a medical service corporation may enter into contracts with hospitals, physician groups, or both which shall govern payment for screening, stabilization and post-stabilization services provided to a member of the health maintenance organization by the contracting hospital or physician group; provided, however, that in the event that there is a dispute regarding the appropriateness of screening, stabilization or post-stabilization services, the member shall not be held liable by either the medical service corporation, the hospital or physician group for any cost in excess of the applicable copayment, coinsurance of deductible if the member had acted as a prudent layperson in determining that an emergency condition existed."

The amendment was *rejected*.

Messrs. Tolman, Tisei, Lynch, Lees, Pacheco, Montigny, Morrissey, Ms. Jacques, Mr. Shannon, Ms. Fargo, Messrs. Creedon, Havern, Panagiotakos, Tarr, Amorello, Rauschenbach, Keating and Bernstein moved to amend the bill by inserting after section 3 the following section:—

"SECTION 3A. Chapter 149 of the General Laws, as appearing in the 1996 Official Edition, is hereby amended by adding the following new section:—

Section 186. (a) As used in this section, the following words shall have the following meanings:

'Health care provider', any individual who is a licensed health care provider under the provisions of chapter 112, including but not limited to registered nurses, licensed practical nurses, physicians. physicians assistants, chiropractors, dentists, occupational therapists, physical therapists, optometrists, pharmacists, podiatrists, psychologists, and social workers, or any other health care provider who performs or performed health care related services.

'Health care facility', any individual partnership, association, corporation or, trust or any person or group of persons that hires or otherwise contracts for the services of health care providers, including any hospital, clinic, convalescent or nursing home, charitable home for the aged, community health agency, or other provider of health care services licensed. or subject to licensing by, or operated by the department of public health; any facility' as defined in section 3 of chapter 111B; any private, county or municipal facility, department or unit which is licensed or subject to licensing by the department of mental health pursuant to section 19 of chapter 19, or by the department of mental retardation pursuant to section 15 of chapter 19B; any facility' as defined in section 1 of chapter 123; the Soldiers' Home in Holyoke, the Soldiers' Home in Chelsea; or any facility' as set forth in section 1 of chapter 19 or section 1 of chapter 19B.

'Public Body', (i) the United States Congress, any state legislature including the general court, or popularly elected local government body, or member or health care provider thereof; (ii) any Federal, state or local regulatory, administrative, or public agency or authority, or instrumentality thereof; (iii) any federal, state, or local law enforcement agency, prosecutorial office. or police or peace officer; or (iv) any division, board, bureau, office, committee or commission of any of the public bodies described in this subsection.

'Manager', any individual to whom a health care facility has given the authority to direct and control the work performance of the affected health care provider, who has authority to take corrective action regarding the violation of the law, rule, regulation, activity, policy, or violation of professional standards of practice of which the health care provider complains, or who has been designated by the health care facility on the notice required under subsection (h).

'Retaliatory action', the discharge, suspension, demotion, harassment, denial of a promotion or layoff or other adverse action taken against a health care provider in the terms and conditions of employment.

(b) a health care facility shall not refuse to hire, terminate a contractual agreement with or take any retaliatory action against a health care provider because the health care provider does any of the following:

(1) discloses, or threatens to disclose to a manager or to a public body an activity, policy or practice of the employer or of another employer with whom the employee's employer has a business relationship, that the employee reasonably believes is in violation of a law, rule, regulation promulgated pursuant to law, or violation of professional standards of practice which the employee reasonably believes poses a risk to public health; or

(2) provides information to or testifies before any public body conducting an investigation, hearing or inquiry into any violation of law, or a rule or regulation promulgated pursuant to law or activity, policy, or violation of professional standards or those practices of the employer or of another employer with whom the employee's employer has a business relationship, which the health care provider reasonably believes poses a risk to public health; or

(3) objects to or refuses to participate in any activity, policy, or practice of the employer or of another employer with whom the employee's employer has a business relationship which the health care provider reasonably believes is in violation of a law, or a rule or regulation promulgated pursuant to law or violation of professional standards of practice which the health care provider reasonably believes poses a risk to public health;

(4) participates in any committee or peer review process, files a report or a complaint, or an incident report discussing allegations of unsafe, dangerous or potentially dangerous care.

(c)(1) Except as provided in paragraph (2) of subsection (b), the protection against retaliatory action provided by paragraph (1) of said subsection (b) shall not apply to a health care provider who makes a disclosure to a public body unless the health care

provider has brought the activity, policy or practice in violation of a law, or a rule or regulation promulgated pursuant to law, or violations of professional standards of practice which the health care provider reasonably believes poses a risk to public health, to the attention of a manager of the health care provider by written notice and has afforded the health care facility a reasonable opportunity to correct the activity, policy or practice.
(2) A health care provider is not required to comply with paragraph (1) if he: (i) is reasonably certain that the activity, policy or practice is known to one or more managers of the health care facility and the situation is emergency in nature: (ii) reasonably fears physical harm as a result of the disclosure provided; or (iii) makes the disclosure to a public body for the purpose of providing evidence of what the health care provider reasonably believes to be a crime.
(d) Any health care provider or former health care provider aggrieved of a violation of this section may, within two years, institute a civil action in the superior court. Any party to said action shall be entitled to claim a jury trial. All remedies available in common law tort actions shall be available to prevailing plaintiffs. These remedies are in addition to any legal or equitable relief provided herein. The court may: (1) issue temporary restraining orders or preliminary or permanent injunctions to restrain continued violation of this section; (2) reinstate the health care provider to the same position held before the retaliatory action, or to an equivalent position; (3) reinstate full fringe benefits and seniority rights to the health care provider; (4) compensate the health care provider for lost wages, benefits and other remuneration, and interest thereon; and (5) order payment by the health care facility of reasonable litigation costs, reasonable expert witness fees and reasonable attorney's fees. A health care provider may bring an action in the appropriate superior court or the superior court of the county of Suffolk for the relief provided in this subsection. The health care provider or former health care provider shall deliver a copy of the complaint to the attorney general. The attorney general shall establish and maintain a register of all complaints made by health care personnel under this chapter.
(e)(1) Except as provided in paragraph (2), in any action brought by a health care provider under subsection (d), if the court finds said action was without basis in law or in fact, the court may award reasonable attorney's fees and court costs to the health care facility.
(2) A health care provider shall not be assessed attorney's fees under paragraph (1) if, upon exercising reasonable and diligent efforts after filing a suit, the health care provider moves to dismiss the action against the health care facility, or files a notice agreeing to a voluntary dismissal, within a reasonable time after determining that the health care facility would not be found liable for damages.
(f) Whenever he believes it to be in the public interest, the attorney general may bring an action in the name of the commonwealth against any health care facility violating subsection (b) or (h). Such action may be brought in the superior court, and any party thereto may claim trial by jury. In any such action, in addition to the remedies the court may provide in accordance with subsection (d), the court may require the health care facility to pay to the commonwealth a civil penalty of not more than $10,000 for each such violation. as well as the cost of reasonable attorney's fees and reasonable expert witness fees.
(g) Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any health care provider under any other federal or state law or regulation, or under any collective bargaining agreement or employment contract.
(h) A health care facility shall conspicuously display notices reasonably designed to inform health care providers of their protection and obligations under this section, and use other appropriate means to keep its health care providers so informed. Each notice posted pursuant to this subsection shall include the name of the person or persons the health care facility has designated to receive written notifications pursuant to subsection (c). Any health care facility who violates this subsection shall be punished by a fine of not less than $250 nor more than $2,500. This subsection shall be enforced by the attorney general.
(i) The attorney general shall have the authority to promulgate rules and regulations necessary and appropriate to enforce this section. "
After debate, the amendment was adopted.
Mr. Rauschenbach moved to amend the bill by adding the following section:—
"SECTION 41. Notwithstanding any of the other provisions of this act, on or before January 1, and no later than January 15, 2000, the house and senate committees on ways and means shall contract with an independent actuary for the purposes of having performed an actuarial analysis and assessment of the financial impact of the provisions of this act. Said actuarial analysis and assessment shall be completed no later than March 1, 2000. Said actuarial analysis shall include, but need not be limited to, the impact of this act on private sector health insurance premiums, the group insurance commission budget and the costs of the medical assistance program administered under chapter 118E and the impact of this act on the availability and affordability of health insurance and the number of uninsured and underinsured residents of the commonwealth. If said actuarial analysis indicates that the provisions of this act have caused or contributed to an increase in private sector health insurance premiums or an increase in the group insurance commission budget or an increase in the cost of said medical assistance program equal to or in excess of three percentage points above the private sector premium rates or the group insurance commission budget or the costs of said medical assistance program in calendar year 1998 or if said actuarial analysis indicates that the provisions of this act have caused or contributed to an increase in the number of uninsured or underinsured residents of the commonwealth over the number of uninsured or underinsured residents in calendar year 1997, or if said actuarial analysis is not completed by March 1, 2000, then a special commission on quality affordable healthcare shall be created.
Such special commission shall be tasked with examining the reasons for the increase in the cost of private sector health insurance premiums, the group insurance commission budget and the costs of the medical assistance program administered under said chapter 118E as well as the reasons for an increase in the number of uninsured or underinsured persons and the impact on the affordability of quality healthcare in the commonwealth.
The special commission shall consist of two members of the senate, one of whom shall be the senate chairperson of the joint committee on health care and the other a member of the minority party; two members of the house of representatives, one of

whom shall be the house chairperson of the joint committee on health care and the other a member of the minority party; the secretary of the executive office of administration and finance; the commissioner of public health; the commissioner of medical assistance; one of whom shall be the president of the Massachusetts Medical Society; a representative from the Associated Industries of Massachusetts; a representative of the Massachusetts Association of HMOs; a representative of the Massachusetts Hospital Association; a representative from the Ad-Hoc Committee to Defend Health Care; and one of whom shall be the executive director from Health Care For All.

Said commission shall be jointly chaired by the senate chairperson of the joint committee on health care, the house chairperson of the joint committee on health care and the secretary of administration and finance. The commission shall adopt such rules and establish such procedures, as it considers necessary for the conduct of its business. The commission may expend such funds as may be appropriated or made available therefor. No action of the commission shall be considered official unless approved by a majority vote of the commission.

The commission shall report its findings, along with draft legislation, to the house and senate committees on ways and means within 90 days of its creation.".

The amendment was adopted.

Ms. Jacques moved to amend the bill by adding the following section:—

"SECTION . Chapter 111 of the General Laws is hereby amended by inserting after section 51F, as appearing in the 1996 Official Edition, the following section:—

Section 51G. Any acute hospital or clinic licensed under section 51 that performs one-day surgery or invasive diagnostic procedures upon a patient 65 years of age or older shall, at the completion of such surgery or procedure, provide such patient with a written aftercare plan. Said plan shall be consistent with medical orders and identified patient needs. The aftercare plan shall include at least the following information:

(1) post-hospital or post-clinic services that are required for the patient including, but not limited to, home health care services;

(2) the reasonable efforts the hospital or clinic shall employ to identify and arrange for such post-hospital or post-clinic services;

(3) the names, addresses, and telephone numbers of service providers;

(4) the medications prescribed and instructions for their use, or verification that such information was provided separately;

(5) scheduled follow-up medical appointments, or verification that such information was provided separately.

The aftercare plan shall be developed with participation of appropriate health professionals, the patient or the patient's legal representative. It shall be reviewed orally with the patient or the patient's legal representative, and shall be documented in the patient's medical record. The department shall promulgate regulations for the implementation of this section."

The amendment was *rejected.*

Ms. Jacques moved to amend the bill by inserting after section 4 the following two sections:—

"SECTION 4A. Section 47N of chapter 175 of the General Laws, as appearing in the 1996 Official Edition, is hereby amended by striking out, in line 6, the words insulin dependent'.

SECTION 4B. Said section 47N of said chapter 175, as so appearing, is hereby further amended by adding the following words:— and shall provide coverage for a voice synthesizer for a glucometer used to measure the insulin level of a diabetic patient, upon receipt of a written order from a physician or endocrinologist."; and further moved to amend by inserting after section 12 the following two sections:—

"SECTION 12A. Section 8P of chapter 176A of the General Laws, as so appearing, is hereby amended by striking out, in line 8, the words insulin dependent'.

SECTION 12B. Said section 8P of said chapter 176A, as so appearing, is hereby further amended by adding the following words:— and shall provide coverage for a voice synthesizer for a glucometer used to measure the insulin level of a diabetic patient, upon receipt of a written order from a physician or endocrinologist."; and further moved to amend by inserting after section 13 the following two sections:—

"SECTION 13A. Section 4P of chapter 176B of the General Laws, as so appearing, is hereby amended by striking out, in line 17, the words insulin dependent'.

SECTION 13B. Said section 4P of said chapter 176B, as so appearing, is hereby further amended by adding the following words:— and shall provide coverage for a voice synthesizer for a glucometer used to measure the insulin level of a diabetic patient, upon receipt of a written order from a physician or endocrinologist."; and further moved to amend by inserting after section 20 the following two sections:—

"SECTION 20A. Section 4H of chapter 176G of the General Laws, as so appearing, is hereby amended by striking out, in line 5, the words insulin dependent'.

SECTION 20B. Said section 4H of said chapter 176G, as so appearing, is hereby further amended by adding the following words:— and shall provide coverage for a voice synthesizer for a glucometer used to measure the insulin level of a diabetic patient, upon receipt of a written order from a physician or endocrinologist."

The amendment was adopted.

Ms. Jacques moved to amend the bill, in section 31, by adding at the end of section 20 the following paragraph:—

"(C) No health care provider, as defined by section 1 of chapter 176O, nor any agent or employee thereof, shall provide information relative to unpaid charges for health care services as defined in said chapter to a consumer reporting agency as defined by section 50 of chapter 93 while an internal or external appeal under this section is pending, or for 15 days following the resolution of such an appeal."

The amendment was adopted.

Mr. Lees moved to amend the bill, in section 39A, by inserting after the words "the commissioner of insurance, or his designee;"

the following words:— "the director of consumer affairs, or his designee; the chair of the board of registration of medicine, or his designee;".
The amendment was *rejected.*
Mr. Tarr moved to amend the bill by inserting after section 37 the following two sections:—
"SECTION 37A. Section 1 of chapter 176M of the General Laws is hereby amended by striking out the definition of health plan', as most recently amended by section 115 of Chapter 19 of the Acts of 1997, and inserting in its place thereof the following definition:—
'Health plan', any individual, general, blanket or group policy of health, accident or sickness insurance issued by an insurer licensed under chapter 175 or the laws of any other jurisdiction; a hospital service plan issued by a nonprofit hospital service corporation pursuant to chapter 176A or the laws of any other jurisdiction; a medical service plan issued by an nonprofit hospital service corporation pursuant to chapter 176B or the laws of any other jurisdiction;
a health maintenance contract issued by a health maintenance organization pursuant to chapter 1676G or the laws of any other jurisdiction; and an insured health benefit plan that includes a preferred provider arrangement issued pursuant to chapter 176I or the laws of any other jurisdiction. The words health plan' shall not include accident only, credit or dental insurance, short-term limited duration insurance, hospital indemnity insurance policies which, for the purposes of this chapter shall mean policies issued pursuant to chap ter 175 which provide a benefit not to exceed $250 per day, as adjusted on an annual basis by the amount of increase in the average weekly wage in the commonwealth as defined in chapter 152, to be paid to an insured or a dependent, including the spouse of an insured, on the basis of a hospitalization of the insured or a dependent or disability income insurance issued as a supplement to liability insurance, insurance arising out of a workers' compensation law or similar law, automobile medical payment insurance, insurance under which benefits are payable with or without regard to fault and which is statutorily required to be contained in a liability insurance policy or equivalent self insurance, long term care only insurance or any policy subject to the provision of chapter 176K. The commissioner may by regulation define other health coverage as a health plan for the purposes of this chapter.
SECTION 37B. Said section 1 of said chapter 176M, as appearing in the 1996 Official Edition, is hereby further amended by inserting after the definition of Resident' the following definition:—
'Short-term limited duration insurance', insurance provided pursuant to a contract with a carrier that has an expiration date specified in the contract taking into account any extensions that may be elected by the policyholder without the carrier's consent, that is within 12 months of the date such contract becomes effective."
After remarks, the amendment was *rejected.*
Mr. Tarr moved to amend the bill by inserting after section 37 the following sections:—
"SECTION 37D. Section 1 of chapter 176M of the General Laws, as appearing in the 1996 Official Edition, is hereby amended by striking out the definition of Health plan' and inserting in its place thereof the following definition:—
'Health plan', any individual, general, blanket, or group policy of health, accident or sickness insurance issued by an insurer licensed under chapter one hundred and seventy-five or the laws of any other jurisdiction; a hospital service plan issued by a nonprofit hospital service corporation pursuant to chapter 176A or the laws of any other jurisdiction; a medical service plan issued by a nonprofit hospital service corporation pursuant to chapter 176B or the laws of any other jurisdiction; a health maintenance contract issued by a health maintenance organization pursuant to chapter 176G or the laws of any other jurisdiction; and an insured health benefit plan that includes a preferred provider arrangement issued pursuant to chapter 176I or the laws of any other jurisdiction. The words health plan' shall not include accident only, credit or dental insurance, short-term limited duration insurance, hospital indemnity insurance policies which for the purposes of this chapter shall mean policies issued pursuant to chapter 175 which provide a benefit not to exceed $250 per day, as adjusted on an annual basis by the amount of increase in the average weekly wage in the commonwealth as defined in chap ter 152 to be paid to an insured or a dependent, including the spouse of an insured, on the basis of a hospitalization of the insured or a dependent or disability income insurance issued as a supplement to liability insurance, insurance arising out of a workers' compensation law or similar law, automobile medical payment insurance, insurance under which benefits are payable with or without regard to fault and which is statutorily required to be contained in a liability insurance policy or equivalent self insurance, long term care only insurance, or any policy subject to the provision of chapter 176K. The commissioner may by regulation define other health coverage as a health plan for the purposes of this chapter.
SECTION 37E. Said section 1 of said chapter 176M, as so appearing, is hereby further amended by inserting after the definition of Resident' the following definition:—
'Short-term limited duration insurance', insurance provided pursuant to a contract with a carrier that has an expiration date specified in the contract taking into account any extensions that may be elected by the policyholder without the carrier's consent, that is within 12 months of the date such contract becomes effective.
SECTION 37F. Said section 1 of chapter 176M of the General Laws, as so appearing, is hereby amended by striking out the definition of Closed plan'.
SECTION 37G. Said section 1 of said chapter 176M, as so appearing, is hereby further amended by inserting after the definition of Base premium rate' the following definition:—
'Bona fide association', an association that (1) has been actively in existence for at least five years; (2) has been formed and maintained in good faith for purposes other than obtaining insurance; (3) does not condition membership in the association on any health status-related factor relating to an individual, including an employee of an employer or a dependent of an employee; (4) makes health insurance coverage offered through the association available to all members regardless of any health status-related factor relating to such members, or individuals eligible for coverage through a member; (5) does not make health

insurance coverage offered through the association available other than in connection with a member of the association; and (6) meets such additional requirements as may be imposed under the laws of the commonwealth.
SECTION 37H. Said section 1 of said chapter 176M, as so appearing, is hereby further amended by inserting after the definition of Carrier' the following definition:—
'Church plan', a church plan as defined by section 3(33) of the Employee Retirement Income Security Act of 1974.
SECTION 37I. Said section 1 of said chapter 176M, as so appearing, is hereby further amended by inserting after the definition of Financial impairment' the following definitions:—
'Governmental plan', a governmental plan as defined by section 3(32) of the Employee Retirement Security Income Act of 1974.
'Group health plan', a group health plan as defined by section 2791 (a) of the Public Health Service Act.
SECTION 37J. Said section1 of said chapter 176M, as so appearing, is hereby further amended by inserting after the definition of Health plan' the following definition:—
'Health status-related factor', any of the following factors: (1) health status; (2) medical condition, including both physical and mental illnesses; (3) claims experience; (4) receipt of health
care; (5) medical history; (6) genetic information; (7) evidence of insurability, including conditions arising out of domestic violence; (8) disability.
SECTION 37K. Said section 1 of said chapter 176M, as so appearing, is hereby further amended by inserting after the definition of Modified community rate' the following definition:—
'Network plan', a health plan under which the financing and delivery of medical care are provided, in whole or in part, through a defined set of providers under contract with the carrier.
SECTION 37L. Said section 1 of said chapter 176M, as so appearing, is hereby further amended by inserting after the definition of Resident' the following definition:—
'Short-term limited duration insurance', insurance provided pursuant to a contract with a carrier that has an expiration date specified in the contract, taking into account any extensions that may be elected by the policyholder without the carrier's consent, that is within twelve months of the date such contract becomes effective.
SECTION 37M. Said section 1 of said chapter 176M, as so appearing, is hereby further amended by striking out the last sentence, in the definition of Eligible individual',and inserting in place thereof the following:—
(8) Such individual's most recent coverage was not terminated based on a factor described in subparagraph (2)(i) or (2)(ii) of subsection (g) of section 3 of this Act, relating to nonpayment of premiums or fraud. The term eligible individual' shall include the eligible dependents of an eligible individual.
SECTION 37N. Said section 1 of chapter 176M is hereby further amended by striking out the definition of Guaranteed issue managed care plan', as so appearing, and inserting in place thereof the following definition:—
'Guaranteed issue managed care plan', a nongroup health plan, including a conversion nongroup plan, sold, issued, delivered, made effective or renewed by a carrier, within or without the commonwealth pursuant to chapter 176G or the laws of any other jurisdiction, to any eligible individual and for which the carrier may not decline to offer to or deny enrollment of such eligible individual, subject to the exclusions set forth in this chapter, that provides the benefits specified in subsection (c) of section 2. A carrier may establish no more than one guaranteed issue managed care plan.
SECTION 37O. Said section 1 of said chapter 176M is hereby further amended by striking out the definition of Guaranteed issue medical plan', as so appearing, and inserting in place thereof the following definition:—
'Guaranteed issue medical plan', a nongroup health plan, including a conversion nongroup health plan, sold, issued, delivered, made effective or renewed by a carrier, within or without the commonwealth pursuant to either chapter 175, 176A or chapter 176B or the laws of any other jurisdiction, to any eligible individual and for which the carrier may not decline to offer to or deny enrollment of such eligible individual, subject to the exclusions set forth in this chapter, that provides the benefits specified in subsection (c) of section 2. A carrier may establish no more than one guaranteed issue medical plan.
SECTION 37P. Said section 1 of said chapter 176M is hereby further amended by striking out the definition of Guaranteed issue preferred provider plan,' as so appearing, and inserting in place thereof the following definition:—
'Guaranteed issue preferred provider plan', a nongroup health plan, including a Conversion nongroup health plan, sold, issued, delivered, made effective or renewed by a carrier, within or without the commonwealth pursuant to chapter one hundred and seventy-six I or the laws of any other jurisdiction, to any eligible individual and for which the carrier may not decline to offer to or deny enrollment of such eligible individual, subject to the exclusions set forth in this chapter, that provides the benefits specified in subsection (c) of section two. A carrier may establish no more than one guaranteed issue preferred provider plan.
SECTION 37Q. Said section 1 of said chapter 176M, as so appearing, is hereby further amended by striking out the last two sentences in the definition of Health plan' and inserting in place thereof the following:—
The words health plan' shall not include accident-only insurance; credit-only insurance, limited-scope dental or vision benefits if offered separately; hospital indemnity or other fixed indemnity insurance if offered as independent, noncoordinated benefits, which for the purposes of this chapter shall mean policies issued pursuant to chapter one hundred and seventy-five which provide a benefit not to exceed two hundred and fifty dollars per day, as adjusted on an annual basis by the amount of increase in the average weekly wage in the commonwealth as defined in chapter one hundred and fifty-two, to be paid to an insured or a dependent, including the spouse of an insured, on the basis of a hospitalization of the insured or a dependent; coverage only for a specified disease or illness if offered as independent, noncoordinated benefits; disability income insurance, including disability income insurance issued as a supplement to liability insurance; insurance arising out of a workers' compensation law or similar law; automobile medical payment insurance, insurance under which benefits are payable with or without regard to fault and which is statutorily required to be contained in a liability insurance policy or equivalent self insurance; long-term care insurance

if offered separately; coverage supplemental to the coverage provided under chapter 55 of title 10, United States Code; any policy subject to the provisions of chapter one hundred and seventy-six K; a medical expense reimbursement policy specifically designed to fill gaps in primary coverage, coinsurance, or deductibles if offered separately; or short-term limited duration insurance.

SECTION 37R. Section 2 of said chapter 176M is hereby amended by striking out subsection (b) and inserting in place thereof the following subsection:—

(b)(1) As a condition of offering nongroup health plans for sale, issue, or delivery in the commonwealth, a carrier shall offer to eligible individuals at least one of the following guaranteed issue health plans: a guaranteed issue managed care plan, a guaranteed issue medical plan, or a guaranteed issue preferred provider plan; provided, however, that nothing in this chapter shall prohibit a carrier from offering more than one guaranteed issue plan in the same service area, should it so choose.

(2) Paragraph (1) shall not be construed to require a carrier offering coverage only in connection with group health plans or through one or more bona fide associations to offer a nongroup guaranteed issue health plan.

SECTION 37S. Section 3 of said chapter 176M of the General Laws is hereby amended by striking out such subsection (a) and inserting in place thereof the following subsection:—

(a) No carrier with respect to an eligible individual desiring to enroll in any guaranteed issue health plan, may decline to offer such coverage to, or deny enrollment of, any such individual nor impose any preexisting condition exclusion or waiting period in any guaranteed issue health plan.

SECTION 37T. Subsection (b) of said section 3 of said chapter 176M is hereby amended by striking out subsection (b) and subparagraph (1) and inserting in place thereof the following paragraphs:—

(b) In calendar year nineteen hundred and ninety-seven, the carrier shall enroll eligible individuals into guaranteed issue health plans during an open enrollment period commencing June first and ending July thirty-first with coverage to become effective September first. The commissioner may postpone said open enrollment period and effective date of coverage should a substantial number of carriers, due to substantial administrative delay, be unable to enroll eligible individuals into a guaranteed issue health plan during the open enrollment period commencing June first and ending July thirty-first; provided, however, that any carrier that is unable to enroll eligible individuals into a guaranteed issue health plan during the open enrollment period beginning July first and ending July thirty-first, for reasons other than substantial administrative delay, may be subject to a fine of one thousand dollars for every day in which it is unable to enroll such eligible individuals in said guaranteed issue health plan and any other penalties available under this chapter. In every year thereafter, a carrier shall enroll eligible individuals into guaranteed issue health plans during an open enrollment period commencing October first and ending November thirtieth of each year, with coverage to becoming effective the following January first.

(1) A carrier shall enroll an eligible individual into a guaranteed issue health plan at a time outside the open enrollment period if such individual requests guaranteed issue coverage either (i) within 30 days of the event which caused him to meet the definition of an eligible individual or (ii) within sixty-three days of termination of any coverage rider a group health plan, governmental plan or church plan. Coverage shall become effective within thirty days of the date of application, subject to reasonable verification of eligibility.

SECTION 37U. Said section 3 of said chapter 176M, as so appearing, is hereby further amended by striking out subsection (d) and re-designating the following sections accordingly.

SECTION 37V. Said section 3 of said chapter 176M, as so appearing, is hereby further amended by striking out the second sentence of subsection (e).

SECTION 37W. Said section 3 of said chapter 176M, as so appearing, is hereby further amended by striking out subsections (f), (g) and (h) and inserting in place thereof the following new subsections:—

(f) A carrier shall not be required to issue a guaranteed issue health plan to any eligible individual if the carrier can demonstrate any of the following: (1) that the acceptance of applications would create for the carrier a condition of financial impairment and the carrier demonstrates the same to the commissioner; (2) that the eligible individual does not meet a networks plan's requirements regarding residence or employment within the plan's approved service area; or (3) that within an area the network plan reasonably anticipates, and demonstrates to the satisfaction of the commissioner, that it will not have the capacity in its network of providers to deliver services adequately to the individual because of its obligation to existing contract holders and enrollees; provided, however, that the network plan shall not offer coverage in the applicable area to any new applicants for coverage, whether they be applicants for group or nongroup coverage, until the later of 180 days after each such refusal or the date on which the network plan notifies the commissioner that it has regained capacity to deliver services to eligible individuals. A carrier shall apply this subsection uniformly to individuals without regard to any status-related factor of such individuals and without regard to whether the individuals are eligible individuals.

(g)(1) except as provided in paragraph (2) of this subsection, a carrier that provides a nongroup health plan to an individual shall renew or continue in force such coverage at the option of the individual.

(2) A carrier may nonrenew or discontinue a nongroup health plan of an individual based only on one or more of the following: (i) the individual has failed to pay premiums or contributions in accordance with the terms of the nongroup health plan or the carrier has not received timely premium payments; provided, however, that a premium shall be considered to have been paid on a timely basis for a guaranteed issue health plan if it is paid within 60 days; (ii) the individual has performed an act or practice that constitutes fraud or made an intentional misrepresentation of whether he qualifies as an eligible individual for a guaranteed issue health plan or made an intentional misrepresentation of material fact under the terms of the nongroup health plan coverage; (iii) the carrier is ceasing to offer coverage in the nongroup market in accordance with subsection (h); (iv) in the case of a carrier that offers health insurance coverage in the nongroup market through a network plan, the individual no longer resides, lives or works

within the plan's approved service area, but only if such coverage is terminated under this subsection uniformly without regard to any health status-related factor of covered individuals; (v) in the case of nongroup health coverage that is made available only through one or more bona fide associations, the membership of the individual in the association, on the basis of which the coverage is provided, ceases, but only if such coverage is terminated uniformly without regard to any health status-related factors of covered individuals.

(3) At the time of coverage renewal of a nongroup health plan, the carrier may modify the policy form for such plans so long as modifications is consistent with the General Laws or mandated by the General Laws and effective on a uniform basis among all individuals with that policy form. In the case of a guaranteed issue health plan, such modification shall be consistent with changes in the standard benefits as determined by paragraph (3) of subsection (c) of section 2.

(h)(1) In any case in which a carrier decides to discontinue offering a particular type of nongroup health plan, coverage of such type may be discontinued by the carrier only if: (i) the carrier provides notice to each covered individual provided coverage of this type of such discontinuation at least ninety days prior to the date of the discontinuation of such coverage; (ii) the carrier offers to each individual provided coverage of this type the option to purchase any other nongroup health plan currently being offered by the carrier; and (iii) in exercising the option to discontinue coverage of this type and in offering the option of coverage under clause (ii), the carrier acts uniformly without regard to any health status-related factor of enrolled individuals or individuals who may become eligible for such coverage.

(2) In any case in which a carrier decides to discontinue offering all nongroup health plans, health insurance coverage may be discontinued by the carrier only if: (i) the carrier provides notice to the commissioner and to each individual of such discontinuation at least one hundred and eighty days prior to the date of the expiration of such coverage; and (ii) all nongroup health plans are discontinued and coverage under such plans is not renewed. In the case of a discontinuation under this paragraph, the carrier may not provide for the issuance of any nongroup health plan in the commonwealth during the five-year period beginning on the date of the discontinuation of the last nongroup health plan not so renewed; provided, however, that this requirement shall not apply to a carrier that discontinued offering all nongroup health plans prior to the effective date of this Act.

(i) In applying subsections (g) and (h) in the case of a nongroup health plan that is made available by a carrier in the nongroup market to individuals only through one or more associations a reference to an individual' or eligible individual' is deemed to include a reference to such association of which the individual is a member.

(j) The provision of section 2701(e) of the Public Health service Act regarding certifications and disclosure of coverage shall apply to nongroup health plans in the same manner as it applies to health plans offered in the small or large group market.

(k) Notwithstanding any general or special law to the contrary, a nongroup heath plan sold to an individual before the individual attains Medicare eligibility shall contain a provision stating that the plan will exclude payment under the plan to the extent that Medicare pays for a benefit or service, and the carrier shall reduce the premium rate charged to an individual according to the parts of Medicare in which the individual is enrolled.

SECTION 37X. Subsection (a) of section 4 of said chapter 176M, as so appearing, is hereby amended by striking out paragraph (1) and inserting in place thereof the following paragraph:—

(1) Each carrier shall establish a base premium rate for each rate basis type within each guaranteed issue health plan it offers. The premium rate charged to any eligible purchaser shall be limited to the base premium rate multiplied by the factors specified in paragraphs (2) and (3). In no event shall the base premium rate established for a guaranteed issue health plan exceed by more than one hundred percent the average base premium rate for the same or similar nongroup heath plan offered on a non-guaranteed issue basis by the five nongroup insurers with the highest nongroup premium volume during the previous calendar year.

SECTION 37Y. Subsection (a) of section 5 of said chapter 176M, as so appearing, is hereby amended by striking out paragraphs (1) and (2) and inserting in place thereof the following paragraphs:—

(1) Each carrier that issues, delivers or renews any nongroup health plan shall, before the use thereof, file with the commissioner the rates, fees and other charges paid by health plan members. Each carrier shall also submit a copy of its nongroup rate filing to the nongroup health insurance advisory board. The hoard may include information from nongroup rate filings in its annual consumer's guide.

(2) Nongroup rate filings shall contain the following information:

(i) the base premium rate to be charged within each rate basis type for each guaranteed issue plan and for any other nongroup health plans;

(ii) the age and geographic adjustments to he charged within each rate basis type for each guaranteed issue plan and any adjustments to be charged for any other nongroup health plan;

(iii) the composite rate for each guaranteed issue health plan;

(iv) the adjusted composite rate for each guaranteed issue health plan;

(v) a memorandum signed by an actuary certifying that the rates for each guaranteed issue health plan have been developed in accordance with section four, including the rate bands and multipliers specified therein, and that the rates for all nongroup health plans offered by the carrier are reasonable in relation to the benefits provided; and

(vi) a comparison of current and proposed rates for each guaranteed issue health plan which shows premium cost components, including but not limited to the cost of prescription drugs administered on an outpatient basis, stated as a percentage of premium.

SECTION 37Z. Said chapter 176M is hereby further amended by striking out section 6, as so appearing, and inserting in place thereof the following section:—

6. (a) As used in this section, the following words shall have the following meanings, unless the context clearly requires otherwise:

'Claims', the dollar amount of benefits paid by a member for individuals covered by a health plan, including any surcharge paid

pursuant to section 18A of chapter 118G of the Massachusetts General Laws. The term claims' shall not include administrative costs, allocated loss adjustment expenses, reserves, or other overhead costs or any portion of a capitated payment not attributable directly to reimbursement for costs incurred to provide medical goods or medical services to an enrollee. The commissioner shall, by administrative regulation, establish a method of determining the dollar amount of claims paid by a member for purposes of calculating reimbursable losses on guaranteed issue health plans.

'Market share', the ratio of the sum of the number of individuals covered under health plans provided by a member and the number of individuals covered by health benefits coverage for which such member provides stop-loss insurance to the sum of the total number of individuals covered under health plans provided by all members and the total number of individuals covered by heath benefits coverage for which members provide stop-loss insurance.

'Member', a member of the Massachusetts Nongroup Health Reinsurance Plan established by this section.

'Premiums', amounts paid to plan members to purchase health plans, including all amounts paid however denominated and including, but not limited to, amounts indicated as being charged for administrative costs, allocated loss adjustment expenses, reserves, or other overhead costs.

'Reimbursable losses', the dollar amount by which claims incurred in any calendar year by a member for guaranteed issue health plans exceeds ninety percent of premiums collected during that year from enrollees in such plans.

'Stop-loss carrier', any persons providing stop-loss insurance or health benefits coverage.

(b) There is hereby established a nonprofit entity to be known as the Massachusetts Nongroup Health Reinsurance Plan. Any carrier or stop-loss carrier doing business in the commonwealth shall be a member of said plan.

(c) Such plan shall be prepared and administered by a governing committee appointed by the governor, consisting of five members representing nongroup and group carriers doing business in the commonwealth. At least one member of the governing committee shall be a domestic carrier. The governing committee shall be responsible for hiring employees of the plan. The initial appointments of two of the members shall be for a term of three years. The initial appointment of two of the members shall be for a term of two years. The initial appointment of one of the members shall be for a term of one year. All appointments thereafter shall be for a term of three years. Meetings of the governing committee shall be conducted in accordance with the provisions of section eleven A of chapter thirty A.

(d) The governing committee shall submit to the commissioner a plan of operation. The commissioner shall, after notice and hearing approve or disapprove the plan of operation. Subsequent amendments to such plan shall be deemed approved by the commissioner if not expressly disapproved in writing by the commissioner within thirty days from the date of the filing of such amendments.

(e) For each calendar year in which the plan is operating, every member shall report to the plan, in a form and at the time designated by the governing committee, the following information for that year: (i) such information deemed necessary by the plan to determine the total number of individuals insured by each member under a health plan as of December 31 or covered by health benefits coverage for which a member provides stop-loss insurance as of December 31; (ii) the number of guaranteed issue health plans provided by the member that were in force as of December 31; (iv) the amount of premiums received by the member during the calendar year from enrollees in guaranteed issue health plans; (v) the amount of claims paid by the member for guaranteed issue health plans during the calendar year; (vi) any other information that the governing committee may reasonably need to fulfill its duties under this section and that is approved by the commissioner for collection. Information submitted to the plan shall be certified by an officer of the member.

(f) At the end of each calendar year and based on the reports filed under subsection (e), the plan shall: (i) assess each member of the plan an amount equal to the member's market share multiplied by the total amount of reimbursable losses incurred by all members for that calendar year; (ii) reimburse each member for reimbursable losses incurred by the member for that calendar year. With respect to a member that will be expected both to pay an assessment and receive a reimbursement, the plan shall calculate the net amount owed by or due to, the member and shall assess or reimbursement the member based on that amount.

(g) Members are entitled to a credit for all assessments paid under this section against the excise on gross premiums subject to chapter 63 of the general laws, as appearing in the most recent edition, that is due and payable in the same year in which the assessment is due and payable.

(h) This section shall apply to losses on guarantee issue plans issued or renewed pursuant to the next open enrollment period after the effective date of this act.

SECTION 37A. Section 3(b) of chapter 176J of the general laws, as appearing in the most recent edition, is hereby amended by striking out the last paragraph which begins with the words Effective December first, nineteen hundred and ninety-nine . . .'.

SECTION 37B. Subsection (a) of section 4 of chapter 176J of the General Laws, as appearing in the 1998 Official Edition, is hereby amended by striking out and inserting in place thereof the following paragraph:—

(4) A carrier shall not be required to issue a health benefit plan to an eligible small business if the carrier can demonstrate to the satisfaction of the commissioner that: (a) the small business fails at the time of issuance or renewal to meet a participation requirement established in accordance with the definition of participation rate in section one; (b) acceptance of an application or applications would create for the carrier a condition of financial impairment, and the carrier makes such a demonstration to the same commissioner, or (c) a carrier that offers health benefit plans through a preferred provider arrangement network plan under Chapter 176I may: (i) limit the eligible small business that may apply for such coverage to those with eligible individuals who live, work, or reside in the service area for such network plan; and (ii) within the service area of such plan, deny such coverage to such employers if the carrier has demonstrated, if required, to the applicable state authority that it will not have the capacity to deliver services adequately to enrollees of any additional groups because of its obligations to existing group contract holders and enrollees, and it is applying this paragraph uniformly to all employers without regard to the claims experience of those employers

and their employees (and their dependents) or any health status-related factors relating to such employees and dependents. A carrier, upon denying health benefit plans in any service area in accordance with this paragraph, may not offer coverage in the small group market within such service area for a period of 180 days after the date such coverage is denied.
SECTION 37C. Section 4 of said chapter 176J, as so appearing, is hereby amended by striking out subsection (c) and inserting in place thereof the subsection:—
(c) A carrier shall not be required to renew the health benefit plan of an eligible small business if (1) the carrier is ceasing to offer coverage in the small employer group market in accordance with section (4) and is consistent with the General Laws; (2) in the case of a health insurance carrier that offers health benefit plans in the market through a network plan, there is no longer any enrollee in connection with such plan who lives, resides or works in the service area of the carrier (or in the area for which the carrier is authorized to do business)and, in the case of the small group market, the carrier would deny enrollment with respect to such plan under subsection (a)(4)(c) above; (3) in the case of a health benefit plan that is made available in the small group market only through one or more bona fide associations, the membership of an employer in the association (on the basis of which the coverage is provided) ceases, but only if such coverage is terminated under this paragraph uniformly without regard to any health status-related factor relating to any covered individual.
(d) In any case in which a carrier decides to discontinue offering a particular type of group health benefit plan offered in the small group market, coverage of such type may be discontinued by the carrier in accordance with the General Laws in such market only if (1) the carrier provides notice to each plan sponsor provided coverage of this type in such market (and participants and beneficiaries covered under such coverage) of such discontinuation at least 90 days prior to the date of the discontinuation of such coverage;
(2) the carrier offers to each plan sponsor provided coverage of this type in such market, the option to purchase all other health benefit plans currently being offered by the carrier to a group health plan in such market; and (3) in exercising the option to discontinue coverage of this type and in offering the option of coverage under subparagraph (2) above, the carrier acts uniformly without regard to the claims experience of those sponsors or any health status-related factor relating to any participants or beneficiaries covered or new participants or beneficiaries who may become eligible for such coverage.
In any case in which a health insurance carrier elects to discontinue offering all health benefit plans in the small group market in the commonwealth, health benefit plans may be discontinued by the carrier only in accordance with the General Laws and if (i) the carrier provides notice to the Commissioner and to each plan sponsor (and participants and beneficiaries covered under such coverage) of such discontinuation at least 180 days prior to the date of the discontinuation of such coverage; and (ii) all health insurance issued or delivered for issuance in the commonwealth in the small group market is discontinued and coverage under such health benefit plans in such market is not renewed.
In the case of a discontinuation under subparagraph (e) in the small group market, the carrier may not provide for the issuance of any health benefit plan in the commonwealth in such market involved during the 5-year period beginning on the date of the discontinuation of the last health benefit plan not so renewed, provided, however, that this provision shall not apply to carriers that discontinued small group health benefit plans prior to the effective date of this act.
(g) At the time of coverage renewal, a health insurance carrier may modify the health benefit plans for a product offered to a group health plan in the small group market if for coverage that is available in such market other than only through one or more bona fide associations, such modification is consistent with the General Laws and effective on a uniformed basis among group health plans with that product.
In applying this section in the case of health benefit plans that are made available by a health insurance carrier in the small group market to employers only through one or more associations, a reference to plan sponsor' is deemed, with respect to coverage provided to an employer member of the association, to include a reference to such employer.
(i) The commissioner shall promulgate regulations to enforce the provisions of this section."; and by adding the following section:—
"SECTION . Sections 37B to 37Z, inclusive, to nongroup plans issued or renewed following the effective date of this act.".
After debate, the question on adoption of the amendment was determined by a call of the yeas and nays, at twenty-seven minutes past five o'clock P.M., on motion of Mr. Tarr, as follows, to wit (yeas 7 — nays 32).

YEAS.

Amorello, Matthew J.	Rauschenbach, Henri S.
Hedlund, Robert L.	Tarr, Bruce E.
Knapik, Michael R.	Tisei, Richard R.
Lees, Brian P.	

— 7.

NAYS.

Antonioni, Robert A.	Montigny, Mark C.

Bernstein, Robert A.	Moore, Richard T.
Berry, Frederick E.	Morrissey, Michael W.
Brewer, Stephen M.	Murray, Therese
Clancy, Edward J., Jr.	Norton, Thomas C.
Creedon, Robert S., Jr.	Nuciforo, Andrea F., Jr.
Durand, Robert A.	O'Brien, John D.
Fargo, Susan C.	Pacheco, Marc R.
Havern, Robert A.	Panagiotakos, Steven C.
Jacques, Cheryl A.	Pines, Lois G.
Jajuga, James P.	Rosenberg, Stanley C.
Joyce, Brian A.	Shannon, Charles E.
Keating, William R.	Tolman, Warren E.
Lynch, Stephen F.	Travaglini, Robert E.
Magnani, David P.	Walsh, Marian
Melconian, Linda J.	Wilkerson, Dianne

The yeas and nays having been completed at twenty-eight minutes before six o'clock P.M., the amended was *rejected.*

The President in the Chair,— Messrs. Rosenberg and Montigny moved to amend the bill, in section 31, in paragraph (B), by inserting, after subparagraph (b), the following subparagraph:—

"(b½) The decision of the review panel shall be binding. The superior court shall have jurisdiction to enforce the decision of the review panel.".

After remarks, the amendments were adopted.

Ms. Pines moved to amend the bill by inserting before section 1 (as printed), the following section:—

"SECTION 1. Chapter 32A of the General Laws is hereby amended by inserting after section 17C the following section:—

Section 17D. The commission shall provide to any active or retired employee of the commonwealth who is insured under the group insurance commission coverage for mastectomy surgery, including coverage for reconstruction of the breast on which surgery has been performed and coverage for all stages of surgery and reconstruction of the other breast to produce a symmetrical appearance if the patient elects reconstruction and in the manner chosen by the patient and the physician."; by inserting after section 1 (as printed), the following section:—

"SECTION 1B. Chapter 118E of the General Laws, as so appearing, is hereby amended by inserting after section 10A the following section:—

SECTION 10B. The division shall provide coverage mastectomy surgery, including coverage for reconstruction of the breast on which surgery has been performed and coverage for all stages of surgery and reconstruction of the other breast to produce a symmetrical appearance if the patient elects reconstruction and in the manner chosen by the patient and the physician."; by inserting after section 4B (inserted by amendment) the following section:—

"SECTION 4C. Chapter 175 of the General Laws is hereby amended by inserting after section 47T the following section:—

Section 47U. Any blanket or general policy of insurance, except a blanket or general policy of insurance which provides supplemental coverage to medicare or other governmental programs, described in subdivision (A), (c) or (D) of section 110 which provides hospital expense and surgical expense insurance and which is issued or subsequently renewed by agreement between the insurer and the policyholder, within or without the commonwealth, during the period this provision is effective, or any policy of accident or sickness insurance as described in section 108 which provides hospital expenses and surgical expense insurance, except a policy which provides supplemental coverage to medicare or other governmental programs, and which is delivered or issued for delivery or subsequently renewed by agreement between the insurer and the policyholder in the commonwealth, during the period that this provision is effective, or any employees' health and welfare fund which provides hospital expense and surgical expense benefits and which is promulgated or renewed to any person or group of persons in the commonwealth. while this provision is effective, shall provide benefits for expense of residents in the commonwealth covered under any such policy or plan, for expense for mastectomy surgery. including coverage for reconstruction of the breast on which surgery has been performed and coverage for all stages of surgery and reconstruction of the other breast to produce a symmetrical appearance if the patient elects reconstruction and in the manner chosen by the patient and the physician."; by inserting after section 12B (inserted by amendment) the following section:—

"SECTION 12D. Chapter 176A of the General Laws is hereby amended by inserting after section 8T the following section:—

Section 8U. Any contract, except contracts providing supplemental coverage to medicare or other governmental programs, between a subscriber and the corporation under an individual or group hospital service plan which shall be delivered, issued or

renewed in the commonwealth shall provide, as a basic benefit to all individual subscribers and members within the commonwealth and to all group members having a principal place of employment within the commonwealth, for mastectomy surgery, including coverage for reconstruction of the breast on which surgery has been performed and coverage for all stages of surgery and reconstruction of the other breast to produce a symmetrical appearance if the patient elects reconstruction and in the manner chosen by the patient and the physician."; by inserting after section 13B (inserted by amendment) the following section:—

"SECTION 13C. Chapter 176B of the General Laws, as so appearing, is hereby amended by inserting after section 4R the following section:—

Section 4S. Any subscription certificate under an individual or group medical service agreement, except certificates which provide supplemental coverage to medicare or other governmental programs, which shall be delivered, issued or renewed in the commonwealth shall provide, as a basic benefit to all individual subscribers and members within the commonwealth and to all group members having a principal place of employment within the commonwealth for expense for mastectomy surgery, including coverage for reconstruction of the breast on which surgery has been performed and coverage for all stages of surgery and reconstruction of the other breast to produce a symmetrical appearance if the patient elects reconstruction and in the manner chosen by the patient and the physician."; by inserting after section 20B (inserted by amendment) the following sections:—

"SECTION 20C. Section 4 of chapter 176G of the General Laws, as so appearing, is hereby amended by adding at the end of the first paragraph the following sentence:— Such health maintenance contract shall also provide coverage for mastectomy surgery as set forth in section 47U of chapter 175, including coverage for reconstruction of the breast on which surgery has been performed and coverage for all stages of surgery and reconstruction of the other breast to produce a symmetrical appearance if the patient elects reconstruction and in the manner chosen by the patient and the physician.

SECTION 20D. Said chapter 176G is hereby amended by inserting after section 4J, as so appearing, the following section:—

Section 4K. Any health maintenance contract shall provided coverage for mastectomy surgery, including coverage for reconstruction of the breast on which surgery has been performed and coverage for all stages of surgery and reconstruction of the other breast to produce a symmetrical appearance if the patient elects reconstruction and in the manner chosen by the patient and the physician."; and by adding the following section:—

"SECTION 42. No policy or plan covered under section 17D of chapter 32A, section 10B of chapter 118E, section 47U of chapter 175, section 8U of chapter 176A, section 4S of chapter 176B and section 4K of chapter 176G shall terminate the services, deselect, reduce capitation payment, or otherwise penalize an attending physician or other health care provider for ordering care consistent with said sections.".

After remarks, the amendment was adopted.

Mr. Berry moved to amend the bill by striking out sections 10 and 11 and inserting in place thereof the following two sections:—

"SECTION 10. Section 2 of chapter 112 of the General Laws, as appearing in the 1996 Official Edition, is hereby amended by inserting after the eighth paragraph the following paragraph:—

The board shall refuse to issue or to renew a certificate of registration to any physician who directly or indirectly provides or orders the provision of care or services which are not medically necessary or appropriate or who refuses, fails, or neglects to provide, directly or indirectly, or to order the provision of care and services which are medically necessary and appropriate for a person who is under the care and treatment of the physician solely because of the nature, type, amount of or method for determining compensation received or to be received by said person.

SECTION 11. The sixth paragraph of section 5 of said chapter 112, as so appearing, is hereby amended by adding the following clause:—

(a) directly or indirectly provided or ordered the provision of care or services which were not medically necessary or appropriate or refused, failed, or neglected to provide, directly or indirectly, or to order the provision of care and services which were medically necessary and appropriate solely because of the nature, type, amount of or method for determining the compensation received or to be received for providing or ordering the provision of said care or services.".

The amendment was *rejected.*

Messrs. Tolman, Berry, Shannon, Morrissey, Keating and Amorello and Ms. Jacques moved to amend the bill, in section 38, in the definition of "Clinical Peer", by inserting after the words "the recognized professional board for their specialty" the following words:— ", and in the case of a child, the specialty shall also include recognized expertise in pediatrics".

After remarks, the amendment was adopted.

Mr. Travaglini moved to amend the bill in section 20, by striking out the definition of "member grievance" and inserting in place thereof the following definition:—

"Member grievance", any oral or written complaint submitted to the health maintenance organization which has been initiated by a member of the health maintenance organization, a provider, or other party acting on behalf of the member with the member's consent, regarding any aspect of the health maintenance organization relative to the member or to an adverse determination regarding coverage of or payment for services provided to the member, in accordance with the requirements of this chapter.".

The amendment was adopted.

Mr. Travaglini moved to amend the bill in section 31, subsection (h), of section 21 of chapter 176G, by inserting after the words "permitting termination", the following words:— "of the provider".

The amendment was adopted.

Mr. Travaglini moved to amend the bill in section 21, subsection (c) of section 5 of chapter 176G, by inserting after the words "to a member or", the following words:— ", at a provider's request, to such".

The amendment was adopted.

Mr. Lees moved to amend the bill (House, No. 5740), in subsection (b), of section 217, in the third sentence, by inserting after the word "care", the following words:— "as stated in the covered individual's policy or contract and is otherwise a covered benefit under the covered individual's policy or contract"; and further moved to amend, in said section 1, in subsection (b) of section 217, by striking out the fourth sentence.

The amendment was *rejected.*

Mr. Rauschenbach moved to amend the bill by adding the following section:—

"SECTION . Notwithstanding any general or special law, rule, regulation or guideline to the contrary, the health care services board within the department of industrial accidents shall comply with the reimbursement policies of managed care organizations in the commonwealth and Title XIX requirements for reimbursement regarding durable medical equipment.".

The amendment was *rejected.*

Mr. Rauschenbach moved to amend the bill, by inserting after section 37 the following section:—

"SECTION 37A. Section 5 of chapter 176M of the General Laws is hereby amended by adding the following paragraph:—

(5) When a carrier replaces coverage for members in a closed health plan with coverage in a guaranteed issue health plan in the allowable three-year period, nothing in this section shall preclude such carrier from maintaining rates or limiting rate increases for the members formerly in any of its closed health plans during the remainder of the allowable three-year period. If a carrier chooses to maintain rates or limit rate increases as provided for herein, the carrier shall do so to the same extent for every member in the same rating classification, including any age rate and area rate adjustment, within each closed health plan and consistent with such rate adjustments specified in section 4. In no event shall such rates exceed the carrier's prevailing rates for the guaranteed issue health plan."

The amendment was *rejected.*

Messrs. Lees and Tarr moved to amend the bill, in section 38, by inserting after the definition of "Prospective review", the following definition:—

"'Religious nonmedical provider", a provider who provides no medical care but who provides only religious nonmedical treatment or religious nonmedical nursing care.; and further moved to amend the bill, in section 38, in chapter 176O, by inserting after section 1 the following section:—

"Section 1A. Treatment of Religious Non-medical Providers.— Nothing in this Chapter shall be construed to restrict or limit the rights of managed care organizations to include as providers religious nonmedical providers, require such managed care organizations to utilize medically based eligibility standards or criteria in deciding provider status of religious nonmedical providers, use medical professionals or criteria to decide patient access to religious nonmedical providers, utilize medical professionals or criteria in making decisions in internal or external appeals from decisions denying or limiting coverage or care by religious nonmedical providers, or compel a participant or beneficiary to undergo a medical examination or test as a condition of receiving for treatment by a religious nonmedical provider, or require such managed care organizations to exclude religious nonmedical providers because they do not provide medical or other data otherwise required, if such data is inconsistent with the religious nonmedical treatment or nursing care provided by the provider.".

The amendment was adopted.

Ms. Jacques moved to amend the bill, in section 3, by inserting after the words "and format of such report card" the following words:— "and shall make such report cared available on-line".

After debate, the amendment was adopted.

After debate, the question on passing the bill to be engrossed was determined by a call of the yeas and nays, at one minute before six o'clock P.M., on motion of Mr. Montigny, as follows, to wit (yeas 39 — nays 0):

YEAS.

Amorello, Matthew J.	Montigny, Mark C.
Antonioni, Robert A.	Moore, Richard T.
Bernstein, Robert A.	Morrissey, Michael W.
Berry, Frederick E.	Murray, Therese
Brewer, Stephen M.	Norton, Thomas C.
Clancy, Edward J., Jr.	Nuciforo, Andrea F., Jr.
Creedon, Robert S., Jr.	O'Brien, John D.
Durand, Robert A.	Pacheco, Marc R.
Fargo, Susan C.	Panagiotakos, Steven C.
Havern, Robert A.	Pines, Lois G.
Hedlund, Robert L.	Rauschenbach, Henri S.
Jacques, Cheryl A.	Rosenberg, Stanley C.
Jajuga, James P.	Shannon, Charles E.

Joyce, Brian A.	Tarr, Bruce E.
Keating, William R.	Tisei, Richard R.
Knapik, Michael R.	Tolman, Warren E.
Lees, Brian P.	Travaglini, Robert E.
Lynch, Stephen F.	Walsh, Marian
Magnani, David P.	Wilkerson, Dianne
Melconian, Linda J.	

— 39.

NAYS. — 0.

The yeas and nays having been completed at two minutes past six o'clock P.M., the bill was passed to be engrossed, in concurrence, with the amendments. [For text of Senate amendments, printed as amended, see Senate, No. 2304.]
Sent to the House for concurrence in the amendments adopted by the Senate.

Papers from the House

There being no objection, during the consideration of the Orders of the Day, the following matter was considered, as follows:
A Bill relative to employee benefits in the city of Boston (House, No. 2194,— on petition) [Local approval received],— was read.
There being no objection, the rules were suspended, on motion of Mr. Durand, and the bill was read a second time, ordered to a third reading, read a third time and passed to be engrossed, in concurrence.

Orders of the Day.

The Senate Bill relative to adjudicatory procedures for the Commonwealth Automobile Reinsurers (Senate, No. 2295)— was considered, the question being on passing it to be engrossed.
Mr. Lees moved that the bill be amended by striking out all after the enacting clause and inserting in place thereof the following text:
"SECTION 1. There is hereby established a special commission to study the impact of implementing a plan, as described in section 113H of chapter 175 of the General Laws, referred to as an assigned risk plan, that would require that all hearings to resolve disputes, claims or complaints brought to the governing committee or any properly constituted subcommittee thereof, by any member, insurer, agent or broker, or any such party affected by the plan or its provisions, or the provisions of this chapter shall be conducted in accordance with the standards contained in 801 C.M.R. 1.00, the Standard Adjudicatory Rules of Practice and Procedure with a provision that chapter 30A shall not apply to such plan. Said special commission shall consist of one member the of the senate committee on ways and means, one member of the house committee on ways and means, and one member to be appointed by the governor.
Said special commission shall report the results of its study by filing the same with the senate and house committees on ways and means and the joint committee on insurance no later than January 31, 1999.".
The amendment was *rejected.*
After debate, on motion of Mr. Moore, a call of the yeas and nays was ordered on the question on passing the bill to be engrossed.
Pending the main question on passing the bill to be engrossed, Ms. Melconian moved that Senate Rule 38A be suspended to allow the Senate to continue in session beyond the hour of eight o'clock P.M.; and the same Senator requested unanimous consent that the rules be suspended without a call of the yeas and nays. There being no objection, the motion was considered forthwith and it was adopted.
At half past six o'clock P.M., the President declared a recess subject to the call of the Chair; and, at twenty-six minutes before eight o'clock P.M., the Senate reassembled, the President in the Chair.
The Senate Bill relative to adjudicatory procedures for the Commonwealth Automobile Reinsurers (Senate, No. 2295),— was further considered, the question being on passing the bill to be engrossed.
After further debate, the question on passing the bill to be engrossed was determined by a call of the yeas and nays, at six minutes before eight o'clock P.M., as previously moved by Mr. Moore, as follows, to wit (yeas 33 — nays 5):

YEAS.

Amorello, Matthew J.	Morrissey, Michael W.

Bernstein, Robert A.
Brewer, Stephen M.
Durand, Robert A.
Fargo, Susan C.
Havern, Robert A.
Hedlund, Robert L.
Jacques, Cheryl A.
Jajuga, James P.
Joyce, Brian A.
Keating, William R.
Knapik, Michael R.
Lees, Brian P.
Lynch, Stephen F.
Magnani, David P.
Melconian, Linda J.
Montigny, Mark C.
Murray, Therese
Norton, Thomas C.
Nuciforo, Andrea F., Jr.
O'Brien, John D.
Pacheco, Marc R.
Panagiotakos, Steven C.
Pines, Lois G.
Rauschenbach, Henri S.
Rosenberg, Stanley C.
Shannon, Charles E.
Tarr, Bruce E.
Tisei, Richard R.
Tolman, Warren E.
Walsh, Marian
Wilkerson, Dianne

— 33.

NAYS.

Antonioni, Robert A.
Berry, Frederick E.
Clancy, Edward J., Jr.
Creedon, Robert S., Jr.
Moore, Richard T.

— 5.

ANSWERED "PRESENT".

Travaglini, Robert E.

— 1.

The yeas and nays having been completed at eight o'clock P.M., the bill was passed to be engrossed.
Sent to the House for concurrence.

The Senate Bill relative to health care facilities (Senate, No. 2252),— was considered, the main question being on passing the bill to be engrossed.
The amendment, previously moved by Mr. Lynch, that the bill be amended in section 2, by striking out, in line 11, the words "exit from, or driveway of" and inserting in place thereof the following words:— "or exit from"; and by striking out, in line 14, the words "exit from, or driveway of," and inserting in place thereof the following words:— "or exit from",— was considered.
During debate on the adoption of the amendment, Mr. Joyce delivered his maiden speech as Senator for the Suffolk and Norfolk District.
Mr. Joyce addressed the Senate as follows:
Mr. President:
Whether we are Pro-Life, as I am, or Pro-Choice, we all abhor violence. Violence, the threat of violence, intimidation or interference, or obstructing the entry to clinics for women exercising their constitutionally protected right to terminate their pregnancies must not be tolerated in this democracy.
And it is not. Federal law imposes a fine and/or jail sentence on individuals who use force, threat of force, or physical obstruction to intentionally injure, intimidate or interfere with persons using or working at reproductive health services clinics.
State law also imposes a fine and/or jail sentence on individuals who obstruct entry to or departure from any medical facility or attempt to impede the provision of medical services.
There is also a statewide injunction with criminal penalties, cumulative to the state law penalties, for blocking access to clinics.

While we must protect the public's safety, we must also zealously protect perhaps the most precious gift of democracy, the right to free speech. Moreover, we must apply our laws uniformly. Thomas Jefferson said, "The most sacred of the duties of a government is to do equal and impartial justice to all its citizens."

With this bill we are neither protecting free speech nor applying the law uniformly.

In addition to prohibiting clearly unacceptable behavior within

a 25-foot buffer zone, this bill prohibits prayer, peaceful protesting, quiet assembly or the offer of counseling. Clearly this bill is not drafted, as is constitutionally required, so as to" . . . burden no more free speech than necessary to accomplish a significant government interest." *Madsen* v. *Women's Health Center Inc.,* 512 U.S. 753, 767 (1994). Several weeks ago the Texas Supreme Court invalidated a complete buffer zone because, like this bill, it " ...burdened more speech than necessary by proscribing peaceful conduct" *Operation Rescue — National et al* v. *Planned Parenthood of Houston*, 1998 WL 352942 (Tex.). One of the great ironies of this bill, which prohibits peaceful protest, prayer and quiet assembly on public property, is that is specifically exempts "persons entering or leaving such facility." A literal interpretation of that provision would exempt a deranged killer such as John Salvi.

Finally, in addition to my belief that this bill is simply unconstitutional, I am convinced that the deafening silence that we have heard from those who would normally be vehemently opposed to any infringement on free speech is due in large measure to the beliefs of the proponents, and those of the opponents, of this bill.

With this legislation we are stepping down that slippery slope toward unevenly applying our force of law, toward allowing speech with which the majority agrees, and stifling the free expression of the minority.

I hope that this bill is defeated.

Mr. Norton in the Chair,— On motion of Mr. Moore, the above statement was ordered printed in the Journal of the Senate.

After further debate, the amendment was *rejected.*

The President in the Chair,— Mr. Lynch moved that the bill be amended, in section 2, by adding the following subsection:— "(f) Nothing herein shall be construed to interfere with any rights provided by chapter 150A or by the federal Labor— Management Act of 1947 or other rights to engage peaceful picketing which does not obstruct entry or departure.".

After debate, the question on adoption of the amendment was determined by a call of the yeas and nays, at twenty-eight minutes past ten o'clock P.M., on motion of Mr. Antonioni, as follow, to wit (yeas 13 — nays 26):

YEAS.

Antonioni, Robert A.	Lynch, Stephen F.
Brewer, Stephen M.	Moore, Richard T.
Clancy, Edward J., Jr.	Morrissey, Michael W.
Creedon, Robert S., Jr.	Norton, Thomas C.
Jajuga, James P.	Pacheco, Marc R.
Joyce, Brian A.	Walsh, Marian
Knapik, Michael R.	

— 13.

NAYS.

Amorello, Matthew J.	Murray, Therese
Bernstein, Robert A.	Nuciforo, Andrea F., Jr.
Berry, Frederick E.	O'Brien, John D.
Durand, Robert A.	Panagiotakos, Steven C.
Fargo, Susan C.	Pines, Lois G.
Havern, Robert A.	Rauschenbach, Henri S.
Hedlund, Robert L.	Rosenberg, Stanley C.
Jacques, Cheryl A.	Shannon, Charles E.
Keating, William R.	Tarr, Bruce E.
Lees, Brian P.	Tisei, Richard R.
Magnani, David P.	Tolman, Warren E.
Melconian, Linda J.	Travaglini, Robert E.

The yeas and nays having been completed at twenty-seven minutes before ten o'clock P.M., the amendment was *rejected.*
Mr Lynch moved that the bill be amended, in section 2, by inserting after the word "right-of-way", in line 9, the following words:— "; provided, however, that the police commissioner or other head of a police public safety department of a municipality where the reproductive health care facility is located determines that significant danger to public safety exists at such reproductive health care facility; provided, however, that said determination shall be in effect for not more than 21 consecutive days"; in said section 2, by striking out, in line 11, the words "exit from, or driveway of" and inserting in place thereof the following words:— "or exit from"; in said section 2, by striking out, in line 14, the words "exit from, or driveway of," and inserting in place thereof the following words:— "or exit from"; and, in said section 2, by striking out, in line 17, the words "or driveway".
After debate, the amendment was *rejected.*
Ms. Walsh and Mr. Joyce moved that the bill be amended by striking out all after the enacting clause and inserting in place thereof the following text:—
"SECTION 1. Chapter 266 of the General Laws, is hereby amended by inserting after section 120E, as appearing in the 1996 Official Edition, the following section:—
Section 120F. (a) As used in this section. the following words shall have the following meanings:—
'Medical facility', any medical office, medical clinic, medical laboratory, or hospital.
'Notice', (1) receipt of or awareness of the contents of a court order prohibiting interference or attempted interference with the entry to or departure from any medical facility; (ii) oral request by an authorized representative of a medical facility, or law enforcement official to refrain from interference or attempted interference with the entry to or departure from any medical facility; or (iii) written posted notice outside the entrance to a medical facility to refrain from interference or attempted interference with the entry to or departure from any medical facility.
(b) Whoever, with the intent to obstruct entry to or departure from any medical facility, interferes by threats, intimidation, coercion, harassment or physically abusive or assaultive conduct, or attempts to interfere by threats, intimidation, coercion, harassment or physically abusive or assaultive conduct, with the entry to or departure from any medical facility, after notice to refrain from such interference or attempted interference, shall be punished for the first offense by a fine of not more than $1,000 or not more than 6 months in a jail or house of correction, or both such fine and imprisonment, and for each subsequent offense by a fine of not less than $500 and not more than $5,000 or not more than 2½ years in a jail or house of correction, or both such fine and imprisonment.
(c) Any person who continues to interfere or attempt to interfere with the entry to or departure from any medical facility by the conduct proscribed under the provisions of subsection (b) after notice to refrain from such interference or attempt to interfere shall be subject to arrest by a sheriff, deputy sheriff, constable, or police officer.
(d) Any medical facility or any person whose rights to provide or obtain services have been interfered with by a violation of this section or which has reason to believe that any person or entity is about to engage in conduct proscribed herein may commence a civil action for injunctive and other equitable relief, including the award of compensatory and exemplary damages. Said civil action shall be instituted either in superior court for the county in which the conduct complained of occurred, or in the superior court for the county in which any person or entity complained of resides or has a principal place of business. An aggrieved medical facility which prevails in an action authorized by this paragraph, in addition to other damages, shall be entitled to an award of the costs of the litigation and reasonable attorney's fees in an amount to be fixed by the court.
(e) Nothing herein shall be construed to interfere with any rights provided by chapter 150A or by the federal Labor-Management Act of 1947 or other rights to engage in peaceful picketing which does not obstruct entry or departure."
Mr. Clancy moved that the pending amendment be amended, in section 1, in the definition of "Notice" by inserting after the word "facility", each time it appears, the following words:— "church, synagogue, temple, mosque or other house of religious worship,";
in said section 1, in subsection (b) by inserting after the word "facility" each time it appears, the following words:— "church, synagogue, temple, mosque or other house of religious worship,"; in said section 1, in subsection (c) by inserting after the word "facility" the following words:— "church, synagogue, temple, mosque or other house of religious worship"; and, in said section 1, in subsection (d) by inserting after the word "facility" each time it appears, the following words:— "church, synagogue, temple, mosque or other house of religious worship,".
After debate, the question on adoption of the further (Clancy) amendment was determined by a call of the yeas and nays, at four minutes before eleven o'clock P.M., on motion of Mr. Clancy, as follow, to wit (yeas 19 — nays 20):

YEAS.

Antonioni, Robert A.	Morrissey, Michael W.
Brewer, Stephen M.	Murray, Therese
Clancy, Edward J., Jr.	Norton, Thomas C.

Creedon, Robert S., Jr.
Jajuga, James P.
Joyce, Brian A.
Knapik, Michael R.
Lynch, Stephen F.
Magnani, David P.
Moore, Richard T.
Pacheco, Marc R.
Panagiotakos, Steven C.
Tarr, Bruce E.
Tisei, Richard R.
Travaglini, Robert E.
Walsh, Marian

— 19.

NAYS.

Amorello, Matthew J.
Bernstein, Robert A.
Berry, Frederick E.
Durand, Robert A.
Fargo, Susan C.
Havern, Robert A.
Hedlund, Robert L.
Jacques, Cheryl A.
Keating, William R.
Lees, Brian P.
Melconian, Linda J.
Montigny, Mark C.
Nuciforo, Andrea F., Jr.
O'Brien, John D.
Pines, Lois G.
Rauschenbach, Henri S.
Rosenberg, Stanley C.
Shannon, Charles E.
Tolman, Warren E.
Wilkerson, Dianne

— 20.

The yeas and nays having been completed at two minutes past eleven o'clock P.M., the further (Clancy) amendment was *rejected.*
Mr. Clancy moved that this vote be reconsidered; and, after debate, the motion to reconsider was *negatived.*
The pending (Walsh-Joyce) amendment was further considered; and, after debate, the question on adoption of the amendment was determined by a call of the yeas and nays, at half past eleven o'clock P.M., on motion of Ms. Walsh, as follows, to wit (yeas 14 —nays 25):

YEAS.

Antonioni, Robert A.
Brewer, Stephen M.
Clancy, Edward J., Jr.
Creedon, Robert S., Jr.
Hedlund, Robert L.
Jajuga, James P.
Joyce, Brian A.
Knapik, Michael R.
Lynch, Stephen F.
Moore, Richard T.
Morrissey, Michael W.
Norton, Thomas C.
Tisei, Richard R.
Walsh, Marian

— 14.

NAYS.

Amorello, Matthew J.
Bernstein, Robert A.
Berry, Frederick E.
Durand, Robert A.
Nuciforo, Andrea F., Jr.
O'Brien, John D.
Pacheco, Marc R.
Panagiotakos, Steven C.

Fargo, Susan C.
Havern, Robert A.
Jacques, Cheryl A.
Keating, William R.
Lees, Brian P.
Magnani, David P.
Melconian, Linda J.
Montigny, Mark C.
Murray, Therese
Pines, Lois G.
Rauschenbach, Henri S.
Rosenberg, Stanley C.
Shannon, Charles E.
Tarr, Bruce E.
Tolman, Warren E.
Travaglini, Robert E.
Wilkerson, Dianne

— 25.

The yeas and nays having been completed at twenty-six minutes before twelve o'clock midnight, the pending amendment was *rejected.*

Messrs. Antonioni and Joyce moved that the bill be amended by striking out all after the enacting clause and inserting in place thereof the following text:—

"SECTION 1. Chapter 266 of the General Laws is hereby amended by inserting after section 120E the following section:—

Section 120E. (a) For the purposes of this section, reproductive health care facility' shall mean a place, other than within a hospital, where abortions are offered or performed.

(b) Any person who has been convicted of

(1) an offense under chapter 265, punishable by a term in the state prison, within 100 feet of a reproductive health care facility;

(2) an offense under said chapter 265, punishable by a term in the state prison, against any employee, agent, or patient of a reproductive health care facility;

(3) a violation of said chapter 266:120E of the General Laws or any similar law of another jurisdiction or the federal government shall be prohibited from knowingly entering or remaining in the following area of private property of a reproductive health care facility or public right of way:

(A) the area within 25 feet of any portion of an entrance to, exit from, or driveway of a reproductive health care facility; and

(B) the area within the rectangle created by extending the outside boundaries of any entrance to, exit from, or driveway of, a reproductive health care facility in straight lines to the point where such lines intersect the sideline of the street in front of such entrance, exit or driveway.

(c) Whoever knowingly violates this section shall be punished, for the first offense, by a fine of not more than $1,000 or not more than six months in a jail or house of correction or both, and for each subsequent offense by a fine of not less than $500 and not more than $5,000 or not more than two and one-half years in a jail or house of correction, or both.

(d) A criminal conviction pursuant to the provision of this section shall not be a condition precedent to maintaining a civil action pursuant to the provision of this section.

SECTION 2. The provisions of this act shall be deemed severable, and if any provision of this act is adjudged unconstitutional or invalid, such judgement shall not affect other valid provisions hereof".

After debate, Mr. Norton in the Chair, the question on adoption of the amendment was determined by a call of the yeas and nays, at twenty-three minutes before twelve o'clock midnight, on motion of Mr. Antonioni, as follows, to wit (yeas 13 — nays 26):

YEAS.

Antonioni, Robert A.
Brewer, Stephen M.
Clancy, Edward J., Jr.
Creedon, Robert S., Jr.
Hedlund, Robert L.
Jajuga, James P.
Joyce, Brian A.
Knapik, Michael R.
Lynch, Stephen F.
Moore, Richard T.
Morrissey, Michael W.
Norton, Thomas C.
Walsh, Marian

— 13.

NAYS.

Amorello, Matthew J.	Nuciforo, Andrea F., Jr.
Bernstein, Robert A.	O'Brien, John D.
Berry, Frederick E.	Pacheco, Marc R.
Durand, Robert A.	Panagiotakos, Steven C.
Fargo, Susan C.	Pines, Lois G.
Havern, Robert A.	Rauschenbach, Henri S.
Jacques, Cheryl A.	Rosenberg, Stanley C.
Keating, William R.	Shannon, Charles E.
Lees, Brian P.	Tarr, Bruce E.
Magnani, David P.	Tisei, Richard R.
Melconian, Linda J.	Tolman, Warren E.
Montigny, Mark C.	Travaglini, Robert E.
Murray, Therese	Wilkerson, Dianne

— 26.

The yeas and nays having been completed at nineteen minutes before twelve o'clock midnight, the amendment was *rejected.*
After debate, the President in the Chair, the question on passing the bill to be engrossed was determined by a call of the yeas and nays, at thirteen minutes before twelve o'clock midnight, on motion of Ms. Jacques, as follows, to wit (yeas 26 — nays 13):

YEAS.

Amorello, Matthew J.	Nuciforo, Andrea F., Jr.
Bernstein, Robert A.	O'Brien, John D.
Berry, Frederick E.	Pacheco, Marc R.
Durand, Robert A.	Panagiotakos, Steven C.
Fargo, Susan C.	Pines, Lois G.
Havern, Robert A.	Rauschenbach, Henri S.
Jacques, Cheryl A.	Rosenberg, Stanley C.
Keating, William R.	Shannon, Charles E.
Lees, Brian P.	Tarr, Bruce E.
Magnani, David P.	Tisei, Richard R.
Melconian, Linda J.	Tolman, Warren E.
Montigny, Mark C.	Travaglini, Robert E.
Murray, Therese	Wilkerson, Dianne

— 26.

NAYS.

Antonioni, Robert A.	Knapik, Michael R.
Brewer, Stephen M.	Lynch, Stephen F.
Clancy, Edward J., Jr.	Moore, Richard T.
Creedon, Robert S., Jr.	Morrissey, Michael W.
Hedlund, Robert L.	Norton, Thomas C.
Jajuga, James P.	Walsh, Marian

Joyce, Brian A.

— 13.

The yeas and nays having been completed at nine minutes before twelve o'clock midnight, the bill was passed to be engrossed.

Sent to the House for concurrence.

Papers from the House.
Engrossed Bills — Land Taking for Conservation, Etc.

There being no objection, during the Orders of the Day, an engrossed Bill authorizing the transfer of certain state owned land in the town of Canton (see House, No. 5722) (which originated in the House), having been certified by the Senate Clerk to be rightly and truly prepared for final passage,— was put upon its final passage; and, this being a bill providing for the taking of land or other easements used for conservation purposes, etc., as defined by Article XCVII of the Amendments to the Constitution, the question on passing it to be enacted was determined by a call of the yeas and nays, at eight minutes before twelve o'clock midnight, as follows, to wit (yeas 39 — nays 0):

YEAS.

Amorello, Matthew J.
Antonioni, Robert A.
Bernstein, Robert A.
Creedon, Robert S., Jr.
Durand, Robert A.
Fargo, Susan C.
Havern, Robert A.
Hedlund, Robert L.
Jacques, Cheryl A.
Jajuga, James P.
Joyce, Brian A.
Keating, William R.
Knapik, Michael R.
Lees, Brian P.
Lynch, Stephen F.
Magnani, David P.
Melconian, Linda J.
Montigny, Mark C.
Moore, Richard T.
Morrissey, Michael W.
Berry, Frederick E.
Brewer, Stephen M.
Clancy, Edward J., Jr.
Murray, Therese
Norton, Thomas C.
Nuciforo, Andrea F., Jr.
O'Brien, John D.
Pacheco, Marc R.
Panagiotakos, Steven C.
Pines, Lois G.
Rauschenbach, Henri S.
Rosenberg, Stanley C.
Shannon, Charles E.
Tarr, Bruce E.
Tisei, Richard R.
Tolman, Warren E.
Travaglini, Robert E.
Walsh, Marian
Wilkerson, Dianne

— 39.

NAYS. — 0.

Ms. Melconian in the Chair,— the yeas and nays having been completed, at five minutes before twelve o'clock midnight, the bill was passed to be enacted, two-thirds of the members present having agreed to pass the same, and it was signed by the President and laid before the Acting Governor on Thursday, July 30, for his approbation.

An engrossed Bill authorizing the Commissioner of the Division of Capital Planning and Operations to grant a permanent easement to the town of Hinsdale (see House, No. 5666, amended) (which originated in the House), having been certified by the senate Clerk to be rightly and truly prepared for final passage,— was put upon its final passage; and, this being a bill providing

for the taking of land or other easements used for conservation purposes, etc., as defined by Article XCVII of the Amendments to the Constitution, the question on passing it to be enacted was determined by a call of the yeas and nays, at four minutes before twelve o'clock midnight, as follows, to wit (yeas 39 — nays 0):

YEAS.

Amorello, Matthew J.
Antonioni, Robert A.
Bernstein, Robert A.
Berry, Frederick E.
Brewer, Stephen M.
Clancy, Edward J., Jr.
Creedon, Robert S., Jr.
Durand, Robert A.
Fargo, Susan C.
Havern, Robert A.
Hedlund, Robert L.
Jacques, Cheryl A.
Jajuga, James P.
O'Brien, John D.
Pacheco, Marc R.
Panagiotakos, Steven C.
Pines, Lois G.
Rauschenbach, Henri S.
Rosenberg, Stanley C.
Shannon, Charles E.
Joyce, Brian A.
Keating, William R.
Knapik, Michael R.
Lees, Brian P.
Lynch, Stephen F.
Magnani, David P.
Melconian, Linda J.
Montigny, Mark C.
Moore, Richard T.
Morrissey, Michael W.
Murray, Therese
Norton, Thomas C.
Nuciforo, Andrea F., Jr.
Tarr, Bruce E.
Tisei, Richard R.
Tolman, Warren E.
Travaglini, Robert E.
Walsh, Marian
Wilkerson, Dianne

— 39.

NAYS. — 0.

The yeas and nays having been completed at one minute before twelve midnight, the bill was passed to be enacted, two-thirds of the members present having agreed to pass the same, and it was signed by the President and laid before the Acting Governor on Thursday, July 30, for his approbation.

Orders of the Day.

The President in the Chair, the Senate Bill to protect consumers from the unauthorized switching of their local and long distance telecommunications service providers (Senate, No. 2291),— was considered, the question being on passing it to be engrossed.
Mr. Morrissey moved that the bill be amended, in section 1, by striking out the paragraph in lines 144 and 145 and inserting in place thereof the following paragraph:—
"(k) in addition to the procedures prescribed in this section, the department may promulgate rules and regulations to establish an alternative informal procedure for the resolution of such complaint at the election of the customer."
The amendment was adopted.
Mr. Morrissey then moved that the bill be amended, in section 1, by striking out, in lines 156 and 157, the words "an acknowledgement to be completed by the customer agreeing to the" and inserting in place thereof the following words:— "a form to be completed by the customer acknowledging the LEC or."
The amendment was adopted.
Mr. Clancy moved that the bill be amended in section 1, by inserting after the word "verification, in line 92, the following paragraph:—
"The department shall waive the operation of this section requiring the recording of third party verification for any entity that can demonstrate it has an adequate verification system in place pursuant to federal guidelines."

The amendment was *rejected*.
The bill (Senate, No. 2291, amended) was then passed to be engrossed.
Sent to the House for concurrence.

The House Bill extending certain capital spending authorizations (printed in House, No. 5607),— was considered, the question being on passing it to be engrossed.
On motion of Mr. Rosenberg, the further consideration thereof was postponed until the next session.

The House Bill relative to compliance with safety codes, remediation of environmental hazards and the preservation and maintenance of the Commonwealth's real property assets (House, No. 5669),— was considered, the question being on passing it to be engrossed.
On motion of Mr. Rosenberg, the further consideration thereof was postponed until the next session.

Reports of Committees.

By Mr. Norton, for the committees on Rules of the two branches, acting concurrently, that Joint Rule 12 be suspended on the Senate petition of Thomas C. Norton for legislation to protect the contractual rights of employees at electric generating facilities within the Commonwealth.
Senate Rule 36 was suspended, on motion of Mr. Panagiotakos, and the report was considered forthwith. Joint Rule 12 was suspended; and the petition (accompanied by bill) was referred to the committee on Commerce and Labor.

By Mr. Norton, for the committees on Rules of the two branches, acting concurrently, that Joint Rule 12 be suspended on the Senate petition of Bruce E. Tarr and Anthony J. Verga for legislation to authorize certain structures to be exempted from certain harbor lines within Smith Cove, Gloucester Harbor, in the city of Gloucester.
Senate Rule 36 was suspended, on motion of Mr. Panagiotakos, and the report was considered forthwith. Joint Rule 12 was suspended; and the petition (accompanied by bill) was referred to the committee on Natural Resources and Agriculture.
Severally sent to the House for concurrence.

Senate Order Adopted.

Mr. Tolman offered the following order, to wit:
Ordered, That, notwithstanding the provisions of Joint Rule 10, the Joint Committee on Taxation shall be granted until Thursday, July 30, 1998 to make its final report on the following House documents numbered 5329, 5546, 5576, 5673, 5674 and 5693.
The order was considered forthwith and adopted.
Sent to the House for concurrence.

Papers from the House.
Engrossed Bills.

The following engrossed bills (all of which originated in the House), having been certified by the Senate Clerk to be rightly and truly prepared for final passage, were severally passed to be enacted and were signed by the President and laid before the Acting Governor on Thursday, July 30, for his approbation, to wit:
Relative to the membership of the retirement board of the town of Brookline (see House, No. 4654);
Relative to the authority of police officers of the cities of Boston and Newton and the town of Brookline (see House, No. 5019);
Relative to the charter of the town of Greenfield (see House, No. 5381); and
Providing for hearing screening of newborns (see House, No. 5392, amended).

Order adopted.

On motion of Ms. Melconian,—
Ordered, That when the Senate adjourns today, it adjourn to meet again on today, Thursday, July 30th, at one o'clock P.M.

Adjournment in memory of Officer Jacob J. Chestnut and Detective John Gibson.

Mr. Brewer and Ms. Melconian moved that when the Senate adjourns today, it adjourn in memory of Officer Jacob J. Chestnut and Detective

John Gibson. Officer Chestnut and Detective Gibson died in the line of duty on Friday, July 24, 1998 at the Capitol building in Washington, D.C. This motion prevailed.
Accordingly, as a mark of respect to the memory of Officer Jacob J. Chestnut and Detective John Gibson, at six minutes past twelve o'clock midnight, on motion of Mr. Lees, the Senate adjourned to meet today at one o'clock P.M.